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THE BOARD OF
RAILWAY COMMISSIONERS FOR CANADA

INDEX TO VOL. XXIII
OF
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The Board of
Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

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ORDER No. 49630

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.10

THURSDAY, the 9th day of March, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the toll published in Supplement No. 5 to Tariff C.R.C. No. 3, filed by the Maritime Coal, Railway and Power Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll which but for the said Act would have been effective in lieu of that published in the said Supplement No. 5 to Tariff C.R.C. No. 3, approved herein, is contained in Supplement No. 4 to Tariff C.R.C. No. 4.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 49642

In the matter of the application of the Central Vermont Railway Company, hereinafter called the "Applicant Company," under Section 330 of the Railway Act, for approval of its Standard Freight Mileage Tariff C.R.C. No. 2252, on file with the Board under file No. 1036.1.

TUESDAY, the 14th day of March, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

Upon the report and recommendation of the Assistant Chief Traffic Officer,—

It is ordered: That the applicant company's Standard Freight Mileage Tariff C.R.C. No. 2252, on file with the Board under file No. 1036.1, be, and it is hereby, approved; the said tariff, with a reference to this order, to be published in at least two consecutive weekly issues of the *Canada Gazette.*

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 49664

In the matter of the application of the Niagara, St. Catharines and Toronto Railway Company, hereinafter called the "Applicant Company," under Section 333 of the Railway Act, for approval of its Standard Passenger Tariff C.R.C. No. 160, on file with the Board under file No. 34322.

THURSDAY, the 16th day of March, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

Upon reading the submissions filed on behalf of the city of St. Catharines, the village of Port Dalhousie, and the town of Merritton, no reply having been received from the town of Thorold to the letters of the Secretary of the Board dated January 28 and March 4, 1933; and upon the report and recommendation of the Assistant Chief Traffic Officer of the Board,—

It is ordered: That the applicant company's Standard Passenger Tariff C.R.C. No. 160, on file with the Board under file No. 34322, be, and it is hereby, approved; the said tariff, with a reference to this order, to be published in at least two consecutive weekly issues of the *Canada Gazette.*

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 49682

In the matter of the application of the Canadian National Railways, hereinafter called the "Applicants," for permission to file, on less than statutory notice, a supplement to tariff C.R.C. No. E-1936, for the purpose of correcting an error in a rate published in Supplement No. 17 to tariff C.R.C. No. E-1936:

File No. 27612.72

WEDNESDAY, the 22nd day of March, A.D. 1933.

S. J. MCLEAN, *Asst. Chief Commissioner.*
J. A. STONEMAN, *Commissioner.*

Upon its appearing that, through misunderstanding, a rate of 37 cents per 100 pounds on felt, in carloads, from Windsor, Ontario, to Oshawa, Ontario, was published in the said supplement, instead of 47 cents the rate published by the Canadian Pacific Railway Company between the same points; and upon the recommendation of the Assistant Chief Traffic Officer of the Board,—

It is ordered: that the applicants be, and they are hereby, permitted to publish and file, on one day's notice, a supplement to the said tariff C.R.C. No. E-1936 changing the rate on felt, in carloads, from Windsor, Ontario, to Oshawa, Ontario, to read 47 cents instead of 37 cents per 100 pounds.

S. J. MCLEAN,
Assistant Chief Commissioner,

GENERAL ORDER No. 511

In the matter of the application of the Canadian Freight Association, under Section 322 of the Railway Act, for approval of proposed Supplement No. 6 to Canadian Freight Classification No. 18, on file with the Board under file No. 33365.91.

TUESDAY, the 21st day of March, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*

S. J. McLEAN, *Asst. Chief Commissioner.*

Whereas notice has been given by the Canadian Freight Association in the *Canada Gazette,* as required by section 322 of the Railway Act, and copies of the said supplement furnished to the organizations named in the General Orders of the Board Nos. 271, 348, 353, 469, and 471, with the request that their objections, if any, be filed within thirty days; and upon consideration of the objection filed by the Bartram Paper Products Company, Limited, Vancouver, British Columbia, and the report and recommendation of the Chief Traffic Officer of the Board,—

It is ordered: That the said proposed Supplement No. 6 to Canadian Freight Classification No. 18 be, and it is hereby, approved, subject to the following changes and additions, namely:—

Page No.	Item No.		L.C.L.	C.L.
9	10	Elevators, Freight or Passenger, and necessary equipment therefor:		
		Add to this item:—		
		Traction Machines, Gear or Gearless.		
9 and continued on page 10	28	This item to be changed to read:—		
		Fertilizers, Chemically Prepared, N.O.I.B.N.:		
		In bulk in bags weighing each 25 lbs. or less..	3	
		In inner containers in barrels or boxes..	3	
		In bulk in bags weighing each 25 lbs. or less or in inner containers in barrels or boxes, C.L., min. wt. 30,000 lbs..		5
		In bulk in cloth bags weighing each over 25 lbs., or in bulk in barrels..	4	
		In bulk in multiple-wall paper bags weighing each over 25 lbs., see Rule 2, Section 12 (*b*)..	4	
		In bulk in cloth or multiple-wall paper bags weighing each over 25 lbs., see Rule 2, Section 12 (*b*), in bulk in barrels or in bulk, C.L., min. wt. 30,000 lbs..		7
11	26	Change Item No. to 25 and to read:—		
		Paper (See Note).		
11	26-27	Add item reading as follows:—		
		Bags, Paper:		
		Oiled, Waxed, Glassine or Vegetable Parchment, printed or not printed:		
		In bundles, O.R.C., or in bales, boxes or crates..	2	
		In packages named, C.L., min. wt. 30,000 lbs..		4
11	33	Add note reading as follows:—		
		Note—Paper bags, wrapping paper or Paper Wrappers, as shown on page 147, items 3 to 10 and page 152, items 5 to 8 of the Classification, and page 11, items 26 to 32 of this supplement, in mixed carloads with articles enumerated under the distinctive heading of "Groceries" that are provided with a C.L. min. wt. of 24,000 lbs., or lower, will be accepted in mixed carloads at C.L. min. wt. of 24,000 lbs., provided the combined weight of the Bags, Wrapping Paper and Wrappers does not exceed 25 per cent of the total weight of the shipment.		
		(The above cancels Note, item 11, page 147 of the Classification.)		

Page No.	Item No.		L.C.L.	C.L.
14	5	Add the following:—		
		Alochol, Denatured or Wood (Methyl Hydrate). Cancel items 2, 3, 4 and 5, page 184, of the Classification. For ratings see items 24, 26, 28 and 30, page 6, of this supplement..		
17	20	This item to be changed to read:—		
		Razor Blades, subject to rule 29.		
		When declared value does not exceed $1 per pound, in boxes.	1	
		When declared value exceeds $1 per pound or if consignor does not declare the value, in boxes..	D-1	
20	40-44	This item to be changed to read:—		
		Woodpulp, Charred:		
		Activated, Absorbent, Clarifying Decolourizing or Deodorizing:		
		In bags or barrels..	3	
		In packages named, C.L., min. wt. 30,000 lbs..		5
		Woodpulp, Charred, or Woodpulp, Charcoal, N.O.I.B.N.:		
		In bags or barrels..	3	
		In packages named, C.L., min. wt. 30,000 lbs..		5

C. P. FULLERTON,
Chief Commisisoner,

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The Board of

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Judgments, Orders, Regulations, and Rulings

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Application of The Ross-Miller Biscuit Company Limited, Napanee, Ontario, for reduction in the classification rating of Fox Biscuits from 3rd to 4th Class.

File No. 38575.

JUDGMENT

By the Board:

At the hearing of this application in Ottawa on March 17 last, Mr. Fremont stated that "the application is to have fox biscuits only altered in classification —not dog biscuits. We are convinced that dog biscuits do not deserve the same consideration."

Mr. Robinson, for the Ross-Miller Company stated that dog biscuits and dog feeds of all kinds are made entirely differently from fox feeds, although the biscuits might be somewhat similar in shape. He was asked as to the contents of each, and replied that about seven different kinds of fox biscuits and three kinds of dog biscuits were manufactured, and that the book filed as Exhibit No. 1 contained the formulae used. The book contains but one formula described as fox biscuits, and one for Kennel (dog) biscuits. These are as follows:—

FOX BISCUITS (Winter feeding)	KENNEL BISCUITS (Dog)
2,426 lbs. flour	2,450 lbs. flour
225 " middlings	225 " middlings
90 " meat	90 " meat
68 " bone	.. . .
14 " fish meal	16 " fish meal
12 " alfalfa meal	12 " alfalfa meal
14 " milk	14 " milk
27 " salt	27 " salt
2 qts. molasses	13½ qts. molasses
1 pt. cod oil	5 pts. cod oil

It will be seen that, with the exception of bone, included in the fox biscuits, the same materials are used in each, also, that the amounts of the dry contents are practically the same. More molasses and cod oil, however, are used in the dog biscuits.

If a reduction to 4th class were granted on the fox biscuits, the fact of the similarity of content and appearance of the dog biscuit would make it difficult for the companies to deny a similar reduction in the classification of that commodity.

It was argued that fox breeding was now getting into the hands of farmers, as a side issue, like poultry, and the rating on fox biscuits should be the same as on animal and poultry food, viz., 4th class.

The value given by applicants for fox biscuits was 4½ cents per pound at Napanee, and 5½ cents delivered at points south of Muskoka. This would mean a value of $90 to $110 per ton.

Poultry food, delivered in Ottawa, runs from $30 to $40 per ton, and one brand of prepared cattle food, used to increase the amount of milk production, runs from $30 to $32 per ton, according to the protein content.

On the basis of value, the fox biscuits should pay a higher rating.

Practically every farmer buys feed for his live stock and/or poultry, and the movement by railway is, therefore, very large. The fox food moves in small quantities, and to a comparatively few breeders.

It was stated a fox would consume a little over 100 pounds per year, so that the difference in cost for feeding, if the breeder received the full benefit of a reduction from 3rd to 4th class, would not amount to more than 20 cents a year in Eastern Canada, for each animal.

In view of the similarity in appearance and content of the fox and dog biscuits, and of all factors entering into classification rating, we are of the opinion that the rating on fox biscuits should not be lower than applicable to dog biscuits.

If this fox food were shipped in powder or granular form, it would receive the benefit of 4th class rating, or the same as now allowed on "Vita Crumbla," or puppy meal.

The application is dismissed.

Ottawa, April 5, 1933.

ORDER No. 49728

In the matter of the application of the Ross-Miller Biscuit Company, Limited, of Napanee, Ontario, for a reduction in the classification rating of fox biscuits from 3rd to 4th class.

File No. 38575

Wednesday, the 5th day of April, A.D. 1933.

Hon. C. P. Fullerton, K.C., *Chief Commissioner.*
S. J. McLean, *Assistant Chief Commissioner.*
J. A. Stoneman, *Commissioner.*

Upon hearing the application at the sittings of the Board held in Ottawa, March 17, 1933, the applicant company and the Canadian Freight Association being represented at the hearing, and what was alleged; and upon the report and recommendation of the Assistant Chief Traffic Officer of the Board,—

It is ordered: That the application be, and it is hereby, dismissed.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 49691

In the matter of the application of G. C. Ransom, Agent, for permission to publish and file, on one day's notice, a supplement to Tariff C.R.C. No. 569, extending the expiry date of certain items published in Supplement No. 4 to the said Tariff C.R.C. No. 569.

File No. 27612.71

Friday, the 24th day of March, A.D. 1933.

S. J. McLean, *Assistant Chief Commissioner.*

J. A. Stoneman, *Commissioner.*

Upon its appearing that certain items published in the said Supplement No. 4 to Tariff C.R.C. No. 569 were made to expire March 31, 1933, in line with rates from United States territory; that the Interstate Commerce Commission, in ex-Parte 103, has extended the expiry date of such rates from United States territory; and that it is desirable that parity of rates be continued,—

It is ordered: That G. C. Ransom, agent, acting under power of attorney duly filed, be, and he is hereby, permitted to publish and file, on one day's notice, a supplement to Tariff C.R.C. No. 569 extending until September 30, 1933, the present rates published in the following items of Supplement No. 4 to Tariff C.R.C. No. 569, namely:—

Items Nos. 330-A, 530-A, 610-A, 780-A, 980-A, 1040-A, 1330-A, 1500-A, 1570-A, 1590-A, 1600-A, 1610-A, and 1710-A.

S. J. McLEAN,
Assistant Chief Commissioner.

GENERAL ORDER No. 512

In the matter of the application of Shipping Containers, Limited, of Montreal, in the Province of Quebec, for permission to use, for shipping over railways in Canada, certain shipping containers prescribed in Interstate Commerce Commission regulations for the transportation of explosives and other dangerous articles by freight, filed with the Board by B. W. Dunn, Agent, under C.R.C. No. 2.

File No. 1717.35

Tuesday, the 4th day of April, A.D. 1933.

Hon. C. P. Fullerton, K.C., *Chief Commissioner.*

S. J. McLean, *Asst. Chief Commissioner.*

Hon. T. C. Norris, *Commissioner.*

J. A. Stoneman, *Commissioner.*

Upon considering the submissions filed in support of the application, and the report and recommendation of the Assistant Chief Traffic Officer of the Board; and upon its appearing that a revision of the rules for the transportation

by freight of explosives and other dangerous articles over railways in Canada is now in progress; and upon the consent of the Railway Association of Canada, filed,—

It is ordered:

1. That, effective April 10, 1933, corrugated fibreboard boxes complying with Shipping Container Specifications 24A, 24B, 24C, 24D, and 24E, published in Agent B. W. Dunn's Tariff C.R.C. No. 2, on file with the Board under file No. 1717.35, may be used for shipping classes of freight permitted by the said tariff to be shipped in such containers over railways in Canada subject to the jurisdiction of the Board.

2. That the provisions of Specification 24B, as referred to above, be extended to include, for manufacture and use in the Dominion of Canada, a box of special construction for not over 45 pounds gross weight, as follows:—

(*a*) Box must be one-piece "Slotted carton" type, complying with all provisions of Specification 24B, except as follows:

(*b*) Board must be: 350-pound test board, double-faced B-flute type with at least 50 corrugations per foot; facings at least 0·020 of an inch thick; corrugated sheet at least 0·009 of an inch thick, and with strength, Mullen or Cady test, at least 60 pounds per square inch;

(*c*) Adjoining edges of body must overlap at least 1½ inches and be stitched to form joint. Stitches must be at not over 2½-inch intervals and within one inch of end of joint. Joints over 18 inches long must have two stitches at each end, parallel to each other and not over one-half inch apart. Liners and liner pads not required;

(*d*) Specification marking in rectangle on box must be C.R.C.-24B 45.

C. P. FULLERTON,
Chief Commissioner,
Board of Railway Commissioners for Canada.

CIRCULAR No. 234

March 30, 1933.

In re *Section 348 of the Railway Act.*

File No. 496.43

I am directed by the Board to call attention to the requirements of Section 348, Subsection 1, of the Railway Act, and to request that your company comply with these requirements by filing forthwith for the approval of the Board a form of the conditions limiting its liability, upon which it is proposed to issue free transportation.

By order of the Board

A. D. CARTWRIGHT,
Secretary, B.R.C.

Re *Demurrage Penalties assessed by the Canadian Car Demurrage Bureau under General Orders 201 and 349.*

File No. 1700.338

The following tables present in summarized form the reports of the Canadian Car Demurrage Bureau covering car demurrage charges assessed for the year 1932.

NOTE.—First two days over free time $1 per day; three days or more, $5 per day.

EASTERN CANADA

Month, 1932	Total cars handled	Number released within free time	Per-cent	Number held over free time	Per-cent	Number held under 3 days over free time	Per-cent	Number held 3 days or more over free time	Per-cent
January	113,442	108,428	95·58	5,014	4·42	4,355	3·84	659	0·58
February	123,618	118,377	95·76	5,241	4·24	4,581	3·71	660	0·53
March	137,410	131,666	95·82	5,744	4·18	5,021	3·65	723	0·53
April	123,429	117,899	95·52	5,530	4·48	4,615	3·74	915	0·74
May	117,708	112,458	95·54	5,250	4·46	4,455	3·78	795	0·68
June	107,559	102,439	95·24	5,120	4·76	4,082	3·80	1,038	0·96
July	98,541	94,491	95·89	4,050	4·11	3,287	3·34	763	0·77
August	100,665	96,698	96·06	3,967	3·94	3,271	3·25	696	0·69
September	108,862	104,671	96·15	4,191	3·85	3,615	3·32	576	0·53
October	128,174	123,278	96·18	4,896	3·82	4,216	3·29	680	0·53
November	126,032	120,802	95·85	5,230	4·15	4,476	3·55	754	0·60
December	102,415	97,909	95·60	4,506	4·40	3,889	3·80	617	0·60
Total	1,387,855	1,329,116	.....	58,739	.....	49,863	.....	8,876	.....
Monthly Average	115,655	110,760	95·77	4,895	4·23	4,155	3·59	740	0·65

WESTERN CANADA

January	70,928	68,396	96·43	2,532	3·57	2,350	3·31	182	0·26
February	78,698	76,148	96·76	2,550	3·24	2,377	3·02	173	0·22
March	79,431	76,738	96·61	2,693	3·39	2,357	2·97	336	0·42
April	68,052	66,106	97·14	1,946	2·86	1,642	2·41	304	0·45
May	66,682	65,048	97·55	1,634	2·45	1,283	1·92	351	0·53
June	68,446	67,029	97·93	1,417	2·07	1,221	1·78	196	0·29
July	55,185	54,103	98·04	1,082	1·96	936	1·70	146	0·26
August	67,020	65,767	98·13	1,253	1·87	1,103	1·65	150	0·22
September	111,036	108,382	97,61	2,654	2·39	2,405	2·17	249	0·22
October	110,339	106,444	96·47	3,895	3·53	3,480	3·15	415	0·38
November	93,591	89,529	95·66	4,062	4·34	3,515	3·76	547	0·58
December	69,613	66,313	95·26	3,300	4·74	2,928	4·21	372	0·53
Total	939,021	910,003	.....	29,018	.....	25,597	.....	3,421	.....
Monthly Average	78,252	75,834	96·97	2,418	3·03	2,133	2·67	285	0·36

OTTAWA, March 31, 1933.

A. D. CARTWRIGHT,
Secretary.

ACCIDENTS REPORTED TO THE OPERATING DEPARTMENT, BOARD OF RAILWAY COMMISSIONERS, FOR MONTH OF JANUARY, 1933

Railway accidents	111,	with 5 persons killed	and	128 injured.
Railway accidents at highway crossings	15,	with 3 persons killed	and	21 injured.
	126	8		149

	Killed	Injured
Passengers	—	33
Employees	1	84
Others	7	32
	8	149

DETAILS OF ACCIDENTS AT HIGHWAY CROSSINGS

No. of Accidents	
	Nova Scotia
1	Automobile—Ran into freight car being pushed over crossing. N.S. licence 31-154.
	Quebec
1	Automobile—Ran into electric motor car. Que. licence 48571.
1	Horse-drawn vehicle—Wagon driver attempted to beat train over crossing.
	Ontario
4	Automobile—Ran into side of train. Ont. licences 06588, C-46453, Z-874, C-2370.
1	Automobile—Skidded onto track owing to slippery condition of pavement. Mich. licence 353542.
1	Automobile—Auto driver familiar with crossing, took no precautions. Ont. licence MD-715.
1	Auto Truck—Truck driver's vision obscured by frost on windshield. Ont. licence 694106.
1	Auto Truck—Ont. licence 33-180-C.
1	Automobile—Ont. licence T-619.
	Saskatchewan
1	Auto Truck—Ran into side of train. Sask. licence 5-940.
	Alberta
1	Auto Truck—Ran into side of train. Alta. licence BT3-269.
	British Columbia
1	Auto Truck—Driver attempted to beat train. B.C. licence 60-414.

Of the 15 accidents at highway crossings, 14 occurred at unprotected crossings and 1 at protected crossings. Eleven of the accidents occurred during the daylight hours and four at night.

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The Board of

Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

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Dangerous Practices of Motorists, Drivers of Other Vehicles, and Pedestrians at Protected Highway Crossings.

Files 45.8.1; 45.8.3

In many cases accidents at highway crossings are due to the negligence of those driving automobiles and other vehicles and of pedestrians. This negligence is found both at unprotected and protected crossings.

The Canadian National Railway lines from December 1, 1932, to February 28, 1933, show forty cases where there was danger at protected crossings due to the negligence of those using the crossings.

The Canadian Pacific Railway (Western Lines) from September 1, 1932, to December 31, 1932. and (Eastern Lines) from November 1, 1932, to January 31, 1933, show a total of seventy-eight cases.

Notwithstanding safety devices and cautionary signals, people take chances and disregard safety. Motor accidents are becoming more frequent. Every sane motorist deplores this.

The Board hopes that the press will give as much publicity as possible to what is covered in the statement, with the hope that it may educate motor drivers and others to be more careful at crossings.

If accidents are to be lessened, the sane motorist must educate the culpably negligent motorists, some of whose actions are recorded in the following lists:—

CANADIAN NATIONAL RAILWAY LINES

Date	Time	Crossing	Licence No. of Auto	Dangerous Practices
Dec. 2	8.40	Toronto Street, Pt. Credit, Ont.	J-3769	Running by signal to stop as train was approaching crossing
" 3	10.37 K	8th Avenue, Regina, Sask.	Sask. 20-247	Disregarded signals and drove car in front of train, and stalled on track; car struck with three passengers. No personal injury.
" 3	14.12 K	96th St., Crossing, Edmonton, Alta.	Alta. 31513	Driver failed to notice approaching train and automobile was struck.
" 6	11.30 a.m.	Stobie Public Road, Sudbury, Ont.	AZ-688	Ran into side of caboose while train travelling about ten miles an hour.

CANADIAN NATIONAL RAILWAY LINES—*Continued*

Date	Time	Crossing	Licence No. of Auto	Dangerous Practices
Dec. 6	11.30 a.m.	Stobie Public Road, Sudbury, Ont.	15710–C	Passed above crossing immediately ahead of train, missing same by not more than two or three feet.
" 12	6.20 p.m.	Mill Street, Saint John, N.B.	J–4114	Gates down. Gong sounding and auto ran into gate. Driver claimed brakes not working.
" 12	20.10 K.	Water Street, Winnipeg, Man.	Man. 30–074	Ran by red light.
" 13	17.18 K.	Water Street, Winnipeg, Man.	Man. 26–569	Ran by red light.
" 17	6.05 p.m.	Perth St., Crossing, Brockville, Ont.	KX–517	Driver of auto unable to stop for crossing on account of icy condition of road.
" 20	8.15 a.m.	East Main St., Crossing, Welland, Ont.	Ont. H.O. 374	Disregarded warning signals a crashed west gate.
" 22	11.25 a.m.	Norfolk St., Crossing, Simcoe, Ont.	Z–2689	Auto hit by train when backing out of south siding. Stop signal was displayed.
" 24	6.10 p.m.	Davenport Road, Toronto, Ont.	Ont. M–8427	Auto crashed through lowered gates, and then drove away.
" 24	2.50 P.	Kingston Road, Cobourg, Ont.	Ont. ML–181	Did not notice gates until too close to stop.
" 31	13.20	Sixth Street, Brandon, Man.	37–826	Ignored stop signal when switch engine almost at crossing.
Jan. 1	1.00 a.m.	East Main St., Welland, Ont.	1 E 9253	Auto driver drove into lowered gates.
" 3	1.05 p.m.	Market Street, Paris, Ont.	HB–390	Ignored warning signals and drove past watchman.
" 3	2.50 a.m.	Main Street, Glencoe, Ont.	EE–205	Approached crossing with auto not under control. Crossing gate damaged.
" 5	20 K.	Sioux Lookout, 1,500 feet west of station, Sioux Lookout, Ont.	69–4106	Truck driver failed to observe approaching engine. Truck struck and one injured. Twenty boys occupied truck.
" 6	9.30 K.	Public crossing M.P. 2.2, Camrose Subd., Alta.	B.C. 3–269	Driver failed to stop truck and ran into side of train.
" 10	12.10 p.m.	Mill Street, Saint John, N.B.	N.B. J–3458	While being lowered, gate rod hit top of auto.
" 12	3.15 K.	Level Crossing, Vernon yard, B.C.	54–393	Drove auto into side of box car being shoved over crossing by engine. Auto badly damaged.
" 20	19.10 K.	Public Crossing, M.P. 40.37, Drumheller Subd., Alta.	Alta. 39624	Auto ran into side of train. Highway slippery and auto skidded on ice. Auto damaged; no personal injuries.
" 20	1.05 p.m.	Charlotte Street, Peterboro, Ont.	L.S. 665	Approaching crossing too fast.
" 23	1.20 p.m.	Norfolk Street, Simcoe, Ont.	EA 662	Ran into side of moving train.
" 24	11.43 a.m.	Main St. Crossing, Jarvis, Ont.	17590 C	Auto driver did not stop in time to prevent running into lowered gates.
" 25	20.10 K.	Water Street, Winnipeg, Man.	Man. 5–434	Ran by red light.
" 26	7.20 p.m.	Charlotte Street, Peterboro, Ont.	NF 2	Approached crossing with car not under control and unable to stop on account of slippery roads. Very reckless driving.
" 29	2.08 p.m.	Fleet & Bathurst St., Toronto, Ont.	H–3174	Driver of auto disregarded stop signal.
" 30	17.55 K.	Water Street, Winnipeg, Man.	Man. 18–273	Ran by red light.
" 30	16.55 K.	Water Street, Winnipeg, Man.	Man. 7–285	Ran by stop disk.
Feb. 1	5.30 p.m.	10th Avenue, Dominion, Que.	Que. 19423	Did not stop for lowered gates; ran into same damaging south gate.
" 1	.....	Kingston Road, Cobourg, Ont.	Ont. KE–850	Did not have auto under control approaching crossing.

CANADIAN NATIONAL RAILWAY LINES—*Concluded*

Date	Time	Crossing	Licence No. of Auto	Dangerous Practices
Feb. 3	.....	Mill St. Crossing, Saint John, N.B.	J-1952	Driver of auto ran against gate damaging same.
" 25	7.15 a.m.	Davenport Road, Crossing, Toronto, Ont.	20297 C	Reckless driving.
" 27	11.55 a.m.	West Street, Orillia, Ont.	KA-847	Driver of auto unable to stop before crashing into gates. Warning bell sounded before gates were lowered.

CANADIAN PACIFIC RAILWAY (Western Lines)

Date and District	Time	Crossing	Licence No. of Auto.	Remarks
MANITOBA DISTRICT Nil.				
SASKATCHEWAN DISTRICT—				
Oct. 4, 1932	17.30K	Broadway, Yorkton	18122	Crosssed over track when stop signal up, about 15 ft. in front of Engine 973.
Nov. 29, 1932	15.25K	Broadway, Yorkton	T. 5-402	Crossed over track when stop signal up, just ahead of Engine 1032.
ALBERTA DISTRICT—				
Oct. 4, 1932	14.00K	4th St. West, Calgary	16-142	Ran into east gate, north side, breaking gate.
Nov. 14, 1932	22.45K	2nd St. Medicine Hat	18-486	Car ran into north gate, breaking same.
" 15, 1932	22.45K	2nd St., Medicine Hat	19-424	Car ran into north gate, breaking same.
" 16, 1932	10.20K	4th St. West, Calgary	17-486	Ran into south gate, breaking same.
ESQUIMALT AND NANAIMO RAILWAY—				
Nov. 1, 1932	18.30K	Russell St., Victoria	B.C. 27,498	East gate run into and broken, also semaphores and tower lights put out of commission by Hindu driving truck heading for Esquimalt, E. & N. freight train having right of way at time.
" 1, 1932	23.10K	Russell St., Victoria	Quarter Cab Taxi Co.	While flagging E. & N. freight train, one lantern was run over and broken by taxi-cab driver.

CANADIAN PACIFIC RAILWAY (Western Lines)—*Continued*

Division	Date	Location	Particulars
Winnipeg Terminals..	Dec. 27....	Sutherland Avenue, Winnipeg, Man.	Tender of engine 6303 was standing on North side of roadway, while yardman was coupling cars in track B. 15, when auto truck, Manitoba licence 899, driven by Brother Louis of Trappist Monastery, St. Norbert, struck engine broadside on. Auto skidded when driver applied brakes, due to slippery condition of street. No damage to engine. Slight damage to truck.
Portage.....	Sept. 1....	Mileage 14·2, Carberry Subdivision, Villiard Avenue, South Carman, Man.	Track mower operated by Casey Jones motor, struck auto, Manitoba licence No. 41-477, driven by Thomas Graham of Carman, on crossing. Damage to track mower, frame bent and twisted and rear axle bent. To auto, two fenders, running board and rear axle bent.
	Sept. 8	Mileage 3, LaRiviere Subdivision, Portage Avenue, Winnipeg, Man.	Auto driven by D. Anderson, licence Man. 23-632, was struck on crossing by Ex. West 1012. Driver claims did not see train approaching in time to stop. Auto badly damaged.
	Sept. 13....	Mileage 22, Napinka Subdivision.	Ford truck, Manitoba licence T. 10.973 driven by Oscar LaLeer of Crystal City did not observe train No. 70 approaching until quite close, when he turned his truck into ditch alongside track. Slight damage to truck.
Brandon.....	Aug. 5....	East Leg of Wye, Bienfait, Sask., Estevan Subdivision.	Western Dominion Colliers engine No. 1 was returning from their mine to yard, when auto driven by Mr. Pirie, Glen Ewen, Sask. Sask. licence 62-069, ran into side of box car at crossing over East leg of wye, No. 18 Highway. Fender, one wheel, axle and lamp damaged on auto.
	Sept. 7....	First Public Crossing, West of Moosomin Station, Broadview Subdivision.	While engine 960, Extra West, was backing into No. two track to clear No. 53, rear of train struck motor truck, owned by W. D. McNaughton Company and driven by V. W. Luker, Sask. licence T-1459. Truck badly damaged.
Regina Division....	Sept. 9....	McLean Yard, Indian Head Subdivision.	Extra 903 East, Engineer Morgan, Conductor Rotters, struck Ford coupe, Sask. Licence 727, driven and owned by R. A. Arnold, 51 Black Block, Regina.
	Oct. 27....	Victoria Ave. Crossing, Regina, Tyvan Subdivision.	Gas-Electric Car 49, Engineer Hutson, Conductor McCauley, struck Chevrolet truck, Sask. Licence T-853 driven by L. Lannona, 2239 Elphinstone St., Regina.
Moose Jaw Division.	July 21....	Highway Crossing, Mileage 7·8, Swift Current Subdivision, 1st Crossing East of Boharm Station.	Train No. 66 struck a Packard auto driven by A. R. Robinson, causing damage to the automobile but no personal injury.
Saskatoon Division.	July 3....	One pole west of M. P. 76, Hardisty Subdivision.	When about 20 feet from crossing, Engineer, Train No. 977, observed an auto approaching from the north, and as driver apparently was not going to stop, engineer applied emergency brake. Auto struck engine and was turned over.
	Sept. 13....	19 Poles East of Mile 90, Wynyard Subdivision.	Driver of auto failed to hear or see Train Extra West 1024, until engine was almost upon car and then apparently stopped the car about a foot into clear, after which, through failure to properly control car, it moved forward and ran into side of engine.
	Dec. 3....	Avenue A, Saskatoon.....	When Yard Engine 3407 was backing over Avenue A. Crossing, auto driver failed to observe signals of Crossing Watchman, resulting in car being struck.

CANADIAN PACIFIC RAILWAY (Western Lines)—*Concluded*

Division	Date	Location	Particulars
Medicine Hat Division.	July 21....	Mileage 23·2, Empress Subdivision.	Track motor car operated by Roadmaster Clarkson, with Transitman Hayes, was run into by Chrysler sedan, Sask. Licence 14–008, driven by Mr. J. W. Adair.
	Sept. 18....	Mileage 85, Langdon Subdivision.	Pontiac 1928 coach, Alta. Licence 61–959, driven by Bill Stogryn of Rosedale, struck side of train, extra south, engine 2763 (C.N.R.). Driver did not see train account heavy rain falling.
	Oct. 19....	Mileage 77·2, Langdon Subdivision.	Extra 3405, during switching operations, struck Ford truck. Truck attempted to cross track ahead of cars but did not entirely clear crossing.
Lethbridge Division.	Oct. 29....	Mileage 38·6, Macleod Subdivision.	Studebaker sedan, Alta. Licence 46–672, driven by C. A. Farquharson of High River, ran into side of engine 2544, train No. 542. Driver failed to observe approach of train.
Calgary Division...	Sept. 12....	Mileage ·05, Macleod Subdivision (Calgary Terminal).	Train 3rd No. 92 struck Ford coupe, Alta. Licence 13–316, driven by Mr. R. Miller. Driver failed to observe approach of train.
Edmonton Division.	July 27....	Whyte Avenue, South Edmonton.	Deadhead equipment of train No. 525, returning to South Edmonton, struck Studebaker sedan, Sask. licence 296, driven by C. A. Morton, Regina. Driver attempted to cross ahead of equipment.
	Sept. 20....	Pearce St., Wetaskiwin.....	Train No. 624, backing over crossing, struck Ford coupe, Alta. licence 26–516, driven by John Ogren, Duhamel. Driver paid no attention to lantern signals.
	Oct. 27....	10 poles north of Mileage 9, Leduc Subdivision.	Extra North 898 struck Chevrolet coupe, Alta. licence 25–125, driven by Chas. Ayling of Red Deer. Driver unable to stop auto before reaching crossing.
	Nov. 25....	Mileage 4·5, Leduc Subdivision.	Extra North 5108 struck Buick coupe, Alta. licence 5–359, driven by W. R. Walne, Calgary. Driver approached at too high speed.
	Dec. 14....	Immediately south of south switch, Hobbema.	No. 85 struck Ford coupe, Alta. licence 26–305, driven by E. Welsford, Hobbema. Driver stalled engine on crossing.
Revelstoke Division.	Sept. 20....	Coldstream Road, 8th Street, Vernon.	When switch engine moving five cars (empty) over crossing, Ford touring car licence BC 53–972, owned and driven by J. Little, Vernon, ran into C.P. 288753.
	Oct. 10....	Mile 36, Mountain Subdivision.	Nash sedan, licence BC 30-292, owned and driven by John E. Syren, Golden, stalled on crossing, and was struck by train No. 2. Auto damaged.
Vancouver Division	Oct. 24....	New Westminster—Columbia Street.	Auto. BC 104–964 ran into engine 466 on train No. 820.
	Dec. 17....	Vancouver—Heatley Avenue	Auto. truck BC 77–280 skidded on icy road and struck by extra 6810 East.
Kootenay Division..	Nov. 12....	Procter—Mile 117·5 Nelson Subdivision.	Auto truck owned and driven by E. T. Coleman, Procter, when crossing track stalled and was struck by engine 3658 with string of cars during switching operations. Engine travelling at speed of about six miles per hour and pushed truck clear of track.
Medicine Hat Division.	Nov. 10....	Gleichen Yard, Mileage 124·8 Brooks Subdivision.	Car owned by Mr. A. W. Clifford, Alta. licence 53–805, was struck by Train No. 73, engine 613, while switching in yard. Engine of motor car stalled on crossing.
Vancouver Division	Sept. 18....	Vancouver—East end of Shed 7.	Yard engine 6262 shoving cars, struck Chevrolet Sedan BC 80–312.
	Dec. 22....	Fraser Mills—Mile 4·92, Westminster Subdivision.	Auto. BC 58–854 ran into side of train No. 815, engine 469.

CANADIAN PACIFIC RAILWAY (Eastern Lines)

Date	Time	Crossing	Licence No. of Auto	Dangerous Practice
New Brunswick District—				
Nov. 14	8.10 p.m.	Douglas Ave., Saint John.		Auto dashed under gates while being lowered for freight train.
" 23	4.20 p.m.	" "		Auto dashed under gates while being lowered for train No. 105.
" 25	8.10 p.m.	" "	NB-5024	Auto turned on crossing.
" 27	6.30 p.m.	" "	NB-6325	Auto dashed under gates while being lowered for freight train.
" 29	8.25 p.m.	" "		Auto dashed under gates while being lowered for train No. 102.
Dec. 6	7.00 p.m.	" "		Auto turned on crossing.
" 21	9.30 p.m.	" "	NB-7290	Auto ran against gates. They were down for freight train.
Nov. 7	7.00 a.m.	" "	J-6106	Auto drove under gates as they were being lowered, stalled engine and could not start car for some time. Bell was ringing.
" 13	1.50 p.m.	" "	J-7482	Auto passed under gates as they were being lowered, at an excessive rate of speed. Bell was ringing.
" 29	11.45 a.m.	" "	J-4900	Auto hit rod on west gate as it was being lowered.
Jan. 16	10.55 a.m.	" "	J-1931	Auto passed under gates as they were being lowered. Bell ringing.
" 19	5.20 p.m.	" "		Auto truck ran under gates while being lowered for engine 2900.
Quebec District—				
Nov. 10		Bridge Street, Quebec	Que. 112405	Driver of auto failed to heed gates being lowered for yard engine backing up and ran underneath north gates which were being lowered and stopped foul of crossing. Car was struck by engine.
" 18		Henderson St., Quebec	Que. A-365	C.N.R. train No. 172 backing up into Palais Station struck auto bus coming from north, slightly damaging same.
" 19		Dorchester St., Quebec.	Que. L-3900	Gates had been lowered and when south gate was brought down, truck ran over crossing and broke north gate. Bell was ringing in tower.
" 23		Bridge St., Quebec	Que. H-1644	Gates were lowered for yard engine backing up. Engine moved ahead and before it cleared crossing north-east gate was lifted by someone resulting in main north gate raising. Driver of car figured gates were being lifted by gateman and came ahead breaking north-east gate.
Dec. 24		Gouin Blvd., Bordeaux.	Que. 45545	Gates were down to remove the lanterns for the day when auto ran through some breaking south-west gate.
" 30		Gouin Blvd., Bordeaux.	Que. F-3889	While crossing gates were down for through freight going west, truck travelling from south ran through two gates, breaking both of them.
Jan. 9		Raglan St., Renfrew	Ont. LA-292	Auto while travelling from south to north, ran into west gate on south side of track breaking all woodwork in gate. Gates had been lowered to allow train to pass.

CANADIAN PACIFIC RAILWAY (Eastern Lines)—*Continued*

Date	Time	Crossing	Licence No. of Auto	Dangerous Practice
QUEBEC DISTRICT—*Concluded*				
Jan. 30	.....	St. Valier St., Quebec	Que. T-1230	All gates lowered for train No. 357 when auto taxi approaching crossing from east, failed to stop and struck south-west gate No. 1 breaking same. Brakes on car not working properly.
ONTARIO DISTRICT—				
Nov. 15	8.40 a.m.	Richmond St., London.	.....	Crossing bell ringing and gate arms being lowered, auto ran into and broke north-west gate arm off.
" 25	5.20 p.m.	Waterloo St., London.	T-8617	Auto ran into gate arm. Crossing bell was ringing and train close to crossing.
" 26	8.30 p.m.	Queen St., Chatham	.....	Auto ran into and broke off northwest crossing gate arm; auto did not stop.
" 29	7.05 p.m.	Waterloo St., London.	1705 T	Auto skidded 56 feet and struck gate arm which was down breaking small piece off gate.
" 29	6.45 p.m.	Pall Mall St., London.	T 4714	Auto skidded 43 feet and ran into gate arm which was down.
" 29	2.18 p.m.	Adelaide St., London.	U 879	Auto disregarded watchman's stop sign and crossed tracks in front of moving cars.
Dec. 3	8.10 p.m.	Queen St., Chatham	.....	Auto travelling at fast rate of speed struck crossing gate arms breaking them. Gates down, lanterns burning and bell ringing.
" 7	10.00 a.m.	Centre St., Chatham.	X-5390	Auto skidded when applying brakes striking gate arms.
" 11	6.15 p.m.	Queen St., Chatham	.....	Auto ran into northeast gate arm breaking it. Crossing bell was ringing and all gates down.
" 11	5.05 p.m.	Quebec St., London	T. 2402	Auto failed to observe watchman's stop sign and crossed tracks in front of train.
" 17	3.47 a.m.	Queen St., Chatham	48-628 C	Auto truck ran into gate arms braeking same and struck side of engine on train No. 20 injuring driver who died later.
" 26	5.08 p.m.	Eramosa Rd., Guelph.	JH-416	Notwithstanding crossing bell ringing and gate arms lowered, auto crashed into gate arm breaking it.
" 31	6.50 a.m.	Adelaide St., London.	U. 2179	Auto disregarded watchman's stop signal and narrowly avoided striking watchman, also being hit by yard engine.
Nov. 23	.....	Front St., Toronto	K-1864	Auto ran into north half No. 6 gate, breaking point.
Dec. 2	.....	"	N-2792	Auto travelling east struck south half No. 5 gate at standard, breaking arm off gate, and collided with another automobile.
" 3	.....	"	O-31	Auto travelling east, ran into No. 5 gate standard, breaking same off close to ground.
" 8	.....	"	B-2095	Auto travelling west ran into No. 6 gate, breaking point.

CANADIAN PACIFIC RAILWAY (Eastern Lines)—*Concluded*

Date	Time	Crossing	Licence No. of Auto	Dangerous Practice
ONTARIO DISTRICT—*Concluded*				
Nov. 24.....	5.19 p.m...	Prince Edward St. near Brighton Stn.	.....	Woman pedestrian accompanied by her three small children including baby in carriage, disregarded wig-wag signal, also engine whistle warning, and attempted to pass over crossing in front of fast passenger train. Party got excited when it was realized that train was approaching faster than was figured. Woman and one child got over crossing safely, another child fell on crossing between rails, got up and ran back clear of train. In some manner baby rolled out of carriage clear of track, carriage being struck by train and demolished.
ALGOMA DISTRICT—				
Nov. 13.....	11.30 p.m...	Elm Street, Sudbury.	AZ-852.....	Auto ran in and broke South-west gate.
" 29.....	8.30 p.m...	" ..	BZ-870.....	Auto ran into and broke South-west gate.

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The Board of

Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

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In the matter of protection at the crossing of the Canadian National Railways east of Hastings station, Ontario (Bridge St.); mileage 43·36, Campbellford Subdivision; and

The application of the Canadian National Railways for permission to replace the existing watchman at the said crossing, with a wig-wag and bell; asking for a grant of forty per cent (40%) of the cost of this work from the Railway Grade Crossing Fund; and for an apportionment of the remainder of the cost of such installation, and of the cost of maintenance and operation, on the same basis as the wages of the present watchman.

File 9437.652.

Heard at Toronto, January 26, 1914.
Heard at Toronto, September 3, 1920.
Heard at Hastings, Ont., February 22, 1933.

JUDGMENT

Commissioner Norris:

An accident occurred at this crossing on November 15, 1910, and the Board's Inspector reported heavy traffic and badly obstructed view, recommending the installation of an electric bell. As the Canadian National Railways (then the Grand Trunk Railway) was of opinion that switching operations would interfere with the effective operation of an electric bell at this point, the offer of the railway company to maintain a ten-mile-an-hour slow order was accepted.

A second accident occurred at this crossing in August, 1913, following which the Board's Inspector recommended gates. In October, 1913, the railway company submitted a plan showing the sight lines and offered to install an electric bell; the Board's Engineers were however convinced that an electric bell would not be effective protection at this point and were strongly in accord with the Operating Department's recommendation for the installation of gates.

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The case was heard at Toronto on January 26, 1914, before the then Chief Commissioner, the then Assistant Chief Commissioner and Commissioner Dr. Mills; following this hearing, order of the Board No. 21290 issued January 29, 1914, providing that this crossing (Bridge street, Hastings, Ont.) be protected by a watchman, $100 per annum to be contributed by the municipality of Hastings towards the wages of such watchman, the remainder to be paid by the railway company.

Order of the Board No. 21396, of date February 24, 1914, permitted the railway company to change the hours of the watchman at this crossing.

On March 3, 1920, the Grand Trunk Railway Company made application to the Board for a reapportionment of the cost of protection at Bridge Street Crossing; they submitted that the wages of the watchman had increased from $45 to $125 per month since the date of the Board's Order No. 21290 (January 29, 1914), and asked that the municipality of Hastings be required to pay 25 per cent of these wages, instead of $100 per annum.

The municipality protested against such reapportionment and upon the case being heard in Toronto on September 3, 1920, order of the Board No. 30071 issued on September 7, 1920, requiring the municipality to pay $200 per annum towards the wages of this watchman, instead of $100 per annum as heretofore.

Order of the Board No. 36725, of date August 19, 1925, allowed the railway company to dispense with the services of the watchman on Sundays.

In June, 1930, the railway company (now the Canadian National Railways) made application to be allowed to dispense with the services of the watchman at Bridge Street Crossing, Hastings, Ont., and to install a bell and wig-wag in lieu thereof. The company submitted that the services of the watchman at this crossing now cost approximately $1,524 per annum, of which $200 is paid by the municipality of Hastings; that the installation of bell and wig-wag protection would involve an initial expenditure of approximately $1,400, with annual maintenance charge calculated at $150, thus enabling the railway company to save approximately $1,100 per annum. The railway company made application for a grant of 40 per cent from the Railway Grade Crossing Fund towards the cost of the proposed bell and wig-wag, and that the balance be apportioned between the municipality and the railway company in the same proportion as was arranged in the case of the wages of the watchman.

The question of the desirability of installing a bell and wig-wag at this crossing, having in view,

(*a*) the situation of the crossing itself and the roads approaching it;

(*b*) the situation which might be created by the continuous ringing of the bell when trains were standing at the station or otherwise within the bonded circuit;

(*c*) the hardship inflicted by the dismissal of the present watchman, in view of the present unemployment situation;

(*d*) the wide diversity of opinion between the Railway and the Municipality in regard to the apportionment of costs of installation and maintenance;

was developed with the interested parties during the summer of 1930, without a decision being reached.

In September, 1930, the railway company submitted that the united counties of Northumberland and Durham and the county of Peterborough, being to some extent responsible for the county highway which crosses the railway at this point, and consequently for the increase in traffic over the crossing, should

share in the cost of the protection thereat; and submitted further that after 40 per cent of the cost of the proposed bell and wig-wag was paid from the Railway Grade Crossing Fund, the balance should be apportioned equally between the railway company and the village of Hastings, "or the municipalities concerned."

The village of Hastings protested vigorously against any such apportionment of cost as that suggested by the railway; the municipal authorities submitted that the bell and wig-wag would be an undesirable form of protection at this crossing in any event; they asked to have the watchman retained and suggested the installation of two red stop signs, one on each side of the railway.

The united counties of Northumberland and Durham were strongly in accord with the village of Hastings that the watchman should be retained, especially in view of the conditions as regards unemployment; they made tentative suggestion that they might favourably consider a contribution towards the cost of the watchman protection. The county of Peterborough declined to assume any part of the cost of protection of any kind at this crossing.

Owing to the widely differing views of the parties, and the fact that the railway company had failed to reassure the Board in the matter of the dismissal of the watchman at Bridge street, the application of the company to be allowed to install a bell and wig-wag was refused on December 12, 1930, on the understanding that the company would be free to bring the matter before the Board again at the end of six months from that date.

In June, 1931, the railway company reopened the matter, made application for permission to install a bell-and-wig-wag at the same time submitting a revised estimate of cost of installation of $1,900, the increase being due to the fact that they must now install a double bell and wig-wag on account of the right angled street. The Board after carefully considering the matter ruled on July 21, 1931, that the existing watchman protection should be continued for a further six months.

On the application of the railway company, order of the Board No. 47313 issued on September 1, 1931, again changing the hours of the watchman at Bridge Street Crossing.

On February 5, 1932, the railway company renewed its application for the replacement of the watchman at this crossing by a bell and wig-wag, and upon the Board advising that such replacement would be allowed if the railway company bore the entire cost of installation and maintenance of such new protection the application for change in the form of protection was withdrawn on March 21, 1932.

In August, 1932, a further renewal of the application was filed by the railway company and refused by the Board.

On February 22, 1933, at the request of the railway company, the matter was heard at Hastings, Ont., before Commissioners Norris, Stoneman and Stone. Considerable evidence was submitted by residents of the district as to the peculiar and admittedly dangerous conditions obtaining at this crossing, on both the east and west approaches.

The railway company submitted a statement of traffic over the crossing, from February 1 to 15 inclusive. This statement showed that on February 7 and 8 four (4) trains passed over the crossing in each twenty-four hours; on February 5 and 11 only two (2) trains passed over the crossing in each of the twenty-four hours; while on the remaining eleven (11) days of the period covered, three trains (3) passed over the crossing in each twenty-four hours.

The railway company also submitted a plan showing the proposed double "three position" wig-wag with bell, which it is suggested be installed in the centre of the roadway to the west of the tracks; the two wig-wags to be attached to the same standard, one facing Bridge street and the other facing Water street. The cost of installation of this device is now estimated by the railway company and the Board's Engineers at $1,960, and the maintenance of same is calculated by the railway company to be approximately $220 per year.

It developed at the hearing that the united counties of Northumberland and Durham had built the cement road through the municipality of Hastings, of which Bridge street and the crossing of the Canadian National Railways forms a part, and that the United Counties Road Department contributes towards the maintenance of this county road. It would appear, therefore, that they automatically share, with the county of Hastings, in responsibility for the increase in traffic over the crossing, and the consequent need for adequate protection thereat.

The railway company submitted that the wages of the watchman at Bridge Street Crossing, 12 hours daily, except Sunday, amounted to $1,524 per annum, of which the village of Hastings pays $200 per annum; that the proposed bell and wig-wag, which will provide daily twenty-four hour protection, will involve an initial capital expenditure of $1,960, with a maintenance charge estimated at approximately $220 per annum; that this change will mean a saving to the railway company of over $1,100 per annum, and providing that the maintenance charges are divided in the same proportion with the municipality as in the case of the watchman's wages, the saving to the municipality will be about $170 per annum.

The municipality did not offer any serious objection to such an apportionment, and were apparently satisfied as to the adequacy of the proposed bell and wig-wag protection.

I am accordingly of opinion that order should issue granting the application of the railway company to be allowed to replace the present watchman at Bridge Street Crossing, Hastings, with a double "three position" wig-wag with bell; this to be installed in the centre of the roadway to the west of the tracks; two wig-wags to be attached to the same standard, one facing Bridge street and the other facing Water street, in accordance with the plan submitted by the Canadian National Railways at the hearing at Hastings on February 22, 1933 (Exhibit No. 2).

I am further of opinion that the cost of installation (estimated at not more than $1,960), and the cost of annual maintenance (estimated at not more than $220), should be apportioned as follows:—

The cost of such installation and maintenance to be divided between the municipalities concerned (the village of Hastings and the united counties of Northumberland and Durham), and the Canadian National Railways, on the same basis as was arranged in the case of the wages of the watchman, namely as $200 is to $1,524; for purposes of calculation, one-seventh of the cost of installation and maintenance to be paid in equal portions by the two municipalities named, and six-sevenths to be paid by the Canadian National Railways.

OTTAWA, March 31, 1933.

Commissioners Stoneman and Stone concurred.

ORDER No. 49759

In the matter of the Order of the Board No. 21290, dated January 29, 1914, as amended by Orders numbered 21396, 30071, 36725, and 47313, dated respectively February 24, 1914; September 7, 1920; August 19, 1925; and September 1, 1931, requiring that the crossing of Bridge Street by the Canadian National Railways at Hastings, Ontario, be protected by a watchman between the hours of 7 a.m. and 7 p.m. daily, except Sundays;

And in the matter of the application of the Canadian National Railways, hereinafter called the "Applicants," for permission to replace the said watchman with wigwags and bells. File No. 9437.652

THURSDAY, the 13th day of April, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
Hon. T. C. NORRIS, *Commissioner.*
J. A. STONEMAN, *Commissioner.*
G. A. STONE, *Commissioner.*

Upon hearing the application at the sittings of the Board held at Hastings, February 22, 1933, in the presence of counsel for and representatives of the applicants and the village of Hastings, and what was alleged; and upon reading the written submissions filed,—

It is ordered:

1. That leave be, and it is hereby, granted the applicants to install, in lieu of the watchman required to be maintained by the said Order No. 21290, dated January 29, 1914, as amended, two three-position wigwags with one bell in the centre of the roadway at the crossing of bridge street, in the village of Hastings and province of Ontario, one facing Bridge street and the other facing Water street, as shown on plan No. SD-3275, dated August 29, 1932, on file with the Board under file No. 9437.652, and in accordance with the "Standard Specifications for Highway Crossing Signals," approved under General Order No. 468.

2. That detail plans showing the form of base to be used in the installation of the wigwags be submitted for the approval of an engineer of the Board.

3. That all switching movements be flagged over the said crossing by the trainmen of the applicants.

4. That the cost of installing and maintaining the said wigwags and bell be borne and paid as follows: one-seventh, in equal portions, by the village of Hastings and the united counties of Northumberland and Durham and six-sevenths by the applicants.

C. P. FULLERTON,
Chief Commissioner.

Application of Mrs. Elizabeth Berg and Penn Coals, Limited, for an order of the Board fixing compensation payable to them for and in respect of coal mines and minerals in and under that portion of the Northeast Quarter of Section 8, Township 55, Range 24, West 4th Meridian, in the Province of Alberta, that is comprised within the right of way of the Northern Alberta Railway Company, from which the applicants are prevented from taking coal and working, and for incidental damage.

File No. 38556

JUDGMENT

FULLERTON, CHIEF COMMISSIONER:

This is an application under section 197 of the Railway Act to fix the amount of compensation payable to the applicants in respect of coal lying under the right of way of the Northern Alberta Railways Company on the northeast quarter of section 8, township 55, range 24, west 4th meridian, in the province of Alberta.

The applicant, Elizabeth Berg, claims as owner and Penn Coals, Limited, as lessee from her of the said coal.

The answer of the railway company is two-fold. In the first place, they say that the applicants have no title to the coal in question, and in the second place, they say that in 1914 they purchased the right of way from the then owner, Robert Kelly, paid him in full for all the coal required to be left for the support of the right of way, and that by virtue of the transfer itself they are entitled to such support.

It is admitted that in 1914 Robert Kelly was the owner in fee simple of the said quarter section and the mines and minerals lying thereunder.

On September 28, 1914, Kelly transferred to the railway company the right of way through the said quarter section by a transfer which reserved all mines and minerals.

The title of the applicant, Elizabeth Berg, to the mines and minerals underlying the right of way is based on a transfer by Robert Kelly of the said quarter-section, excepting certain described portions, to the Cambrian Collieries Limited, a mortgage back to Robert Kelly, and an assignment of said mortgage to the applicant, Mrs. Berg, all made on April 29, 1918.

The mortgage was foreclosed and the title of the mortgagors vested in the applicant, Mrs. Berg, by an order of the Supreme Court of Alberta dated September 28, 1921.

Whether or not the applicant, Mrs. Berg, obtained title to the mines and minerals under the above order depends on whether they were transferred to the Cambrian Collieries Limited by the transfer of April 29, 1918. The said transfer is of " all my estate and interest in the said piece of land."

The said piece of land is the quarter-section excepting thereout certain described portions, including $8\frac{64}{100}$ acres for railway right of way " as in Certificate of Title 205-D-33."

In Certificate of Title referred to the right of way is described as—

> " all that part of the northeast quarter of section eight (8), township fifty-five (55), range twenty-four (24), west of 4th meridian, in the province of Alberta, Dominion of Canada, lying between two lines parallel to and perpendicularly distant forty-nine and one-half ($49\frac{1}{2}$) feet, on either side of the centre line of the Edmonton, Dunvegan and British Columbia Railway, as shown upon a map or plan of record in the Land Titles office . . . containing eight and sixty-four hundredths ($8\frac{64}{100}$) acres more or less, excepting thereout all mines and minerals . . . "

Mr. Woods, who appeared for the applicants, also relies on a certain separation agreement made between Robert Kelly and his wife, now Mrs. Berg, bearing date July 29, 1922. This agreement recites that the said Elizabeth Kelly is the owner of certain lands, including part of the northeast quarter of the said section 8, as described in Certificate of Title 104-53, and it further recites that Elizabeth Kelly has agreed to pay the sum of $10,000 in full satisfaction of any interest which the said Robert Kelly may have in the aforesaid properties including all mines and minerals.

The operative part of the agreement contains the covenants usually found in a separation agreement and then proceeds:—

> " And in further consideration of the premises the said Robert Kelly doth hereby and by these presents demise, release and forever discharge the said Elizabeth Kelly, her heirs, executors, administrators or assigns, of and from all manner of trusts, actions, causes of action, debts, accounts, covenants, contracts, claims and demands whatsoever, whether at law or in equity, which the said Robert Kelly may have against the said Eliza-

beth Kelly or in the said lands, or can or may or could or might hereafter have or claim in any wise howsoever in, to or out of the said lands, or otherwise howsoever, or for or by reason of or in respect of any act, matter, cause or thing whatsoever."

The Certificate of Title 104/G-53 referred to in the recital describes certain land excepted from the quarter-section, and among others excepted are $8\frac{64}{100}$ acres more or less for the Edmonton, Dunvegan and British Columbia Railway right of way of record in the Land Titles office as railway plan 5773 A.Y.

Mr. Woods strongly urged that the effect of the transfer to the Cambrian Collieries Limited and of the agreement last referred to was to transfer to the applicant, Mrs. Berg, the coal under the right of way.

Mr. Walker on behalf of the railway company equally strenuously contended that these conveyances had no such effect.

To decide this question would be to decide a question of title which under the authorities is not a matter for the Board, but one that should be left to the regular courts.

For the purpose of this judgment, however, I will assume that the applicant, Mrs. Berg, took under the conveyances above referred to all the rights which Robert Kelly himself had in the coal lying under the right of way after he had executed the transfer to the railway company. It requires no authority for the position that she could take no greater rights and I will, therefore, proceed to consider what those rights were.

Before the right of way was transferred by Kelly to the railway company in 1914, the latter had taken all the proceedings required by the Railway Act for its expropriation. The plan, profile and book of reference were deposited in the Land Titles office on the 19th day of July, 1912, and notice of filing duly published. Notice of expropriation was served on Robert Kelly, and on the 6th day of September, 1912, an order for possession obtained. This order provided that the railway company " shall continue in possession of the said land for the purpose of their grading operations only, and that before proceeding with the laying of steel, application be made upon four days' clear notice to determine what (if any) amount shall be paid into court as security for the payment of *any compensation to which the parties entitled to the mineral rights may be found entitled.*"

On December 3, 1912, an order was made by the Hon. Mr. Justice Scott in Chambers, which reads as follows:—

> " Upon the application of the Edmonton, Dunvegan and British Columbia Railway Company for an order putting them in possession of the land in question herein and to determine the amount payable into court as security for the payment of *any compensation to which the parties entitled to mineral rights in the said lands may be found entitled,* pursuant to the order of the Honourable Mr. Justice Beck, made in this matter on the 6th day of September, 1912, upon hearing what was alleged by counsel for the railway company and for the *parties entitled to the said mineral rights,* and it appearing that application has been made to the Board of Railway Commissioners for Canada for an order permitting the said persons to work any mines and minerals in and under and adjoining the said right of way of the said railway and that the said Board of Railway Commissioners have not yet delivered judgment on the said application and the solicitors for the said railway company undertaking to pay the court within five days after same should be determined, such amount as the judge of this honourable court in chambers should consider sufficient as security for the payment by the said railway company of the compensation, if any, payable to the parties entitled to such mineral rights."

The order then directs the sheriff to put the railway company in possession of the right of way and concludes as follows:—

> "It is further ordered that any party interested may apply on two days' clear notice at any time after the award of the Board of Railway Commissioners for Canada has been made on the application aforesaid, to fix the *amount payable to court as aforesaid.*"

On the 20th March, 1913, upon the application of Robert Kelly and others, the Board of Railway Commissioners made the following order:—

> "*It is ordered as follows:*
>
> "That the applicants be, and they are hereby, granted leave to work and excavate the coal lying under the right of way of the railway company on section 8, township 55, range 24, west of the 4th meridian, in the province of Alberta, as shown on the plan on file with the Board under file Nos. 20827 and 20827.1, subject to and upon the following conditions, namely:—
>
> "1. The coal not already mined under the right of way of the railway company to be left in place; and in the Kelly mine the coal to be left in place under the right of way and under additional strips fifteen and twenty-five feet in width outside the right of way on the northwest and southeast sides respectively.
>
> "2. Two levels, eight feet wide and seven feet high, to be constructed to each mine—the levels to be seventy feet apart and the timbers to be placed inside this measurement.
>
> "3. The posts and timbers under the right of way to be of tamarack —posts to be seven inches in diameter and the roof timbers eight inches by five inches, and placed on edge.
>
> "4. All work within the limits set forth in paragraph 1 to be done under the supervision of an engineer of the railway company, who shall have right of access to the mine at any time, in order to examine timbers in the levels under the right of way.
>
> "5. Where the coal has already been taken out under the right of way, the applicants shall notify the railway company of the true position of the levels abandoned."

By order dated May 15, 1913, Harvey, J., fixed the amount payable into court by the railway company at $4,000.

By order dated May 23, 1913, Beck, J., appointed R. G. Drinnan, Harold H. Parlee and Frank Ford arbitrators to fix the compensation payable by the railway company to the parties interested.

On March 5, 1914, Robert Kelly and the railway company entered into an agreement which reads in part as follows:—

> "That the proceedings taken by the railway company for the expropriation of its right of way over the land above set out and as described in the notice to treat served in respect thereof are settled by the railway company agreeing to pay, and it hereby agrees to pay to Robert Kelly the sum of two thousand nine hundred and twenty-two dollars and sixteen cents ($2,922.16) and by Robert Kelly transferring the land in question to the railway company reserving the mines and minerals."

The agreement was implemented by the transfer to the railway company dated September 28, 1914.

As the Railway Act then stood the rights and obligations of the parties in respect of the right of way and the mines and minerals thereunder, were fixed and settled by the transfer. The railway company got title to the land and

the right to have vertical and lateral support for their railway. Robert Kelly was paid for his land and for all damages suffered by reason of being prevented from removing the coal required to support the railway.

The Judicial Committee of the Privy Council had occasion to consider the sections of the Act dealing with mines and minerals as they stood in 1914, in the case of Davies v. James Bay Railway Company, 19 C.R.C. 86.

In that case the railway company had served on Davies, the appellant, a notice of expropriation under the Railway Act. The arbitrators appointed under the Act made an award of $238,583 in appellant's favour. A substantial portion of the said award covered the value of shale lying under and adjacent to the right of way. The question was as to appellant's right to recover compensation in the arbitration in respect of shale, and this question depended upon the construction of the provisions of the Railway Act, more particularly upon sections 155, 170 and 171 (1).

Upon appeal from the award of the arbitrators to the Court of Appeal for Ontario the appellant's claim in respect of shale was disallowed. Hodgins, J., who delivered the judgment of the Court of Appeal, held that "as the respondents had not bought the minerals their value could not be taken into account in the present proceedings, but ought to be taken into account if the appellant applied hereafter to the Board of Railway Commissioners for permission to work the shale."

In delivering the judgment of their Lordships, Viscount Haldane, L.C., pointed out that in England, apart from the English Railways Clauses Consolidation Act, when land is sold with a reservation of the minerals to the vendor he cannot in the absence of special bargain, work them so as to let down the surface which he has sold, and that although the vendor retains the minerals and the right to work them, he can exercise this right only at his own risk. He then went on to explain that the common law in England had been completely altered by sections 77 to 85 of that Act, that under these sections, so far as concerns mines and minerals under the railway or within the prescribed distance, the company is deprived of the natural right to support which it would have under an ordinary conveyance, that unless it has expressly purchased the minerals the owner may work them, but before doing so he must give the company thirty days' notice of his intention and the company may then, if it is willing to pay compensation, give him a counter notice and so, on paying compensation stop the working.

He continued at p. 94:—

> "In the Dominion of Canada the law has been differently moulded Their Lordships have given much consideration to the group of clauses in the Railway Act which deal with the policy adopted, and they think that their effect is as follows: The company which acquired the surface was not, as by the English Act, deprived of the natural right to support from subjacent and adjacent minerals. It was, on the other hand, put on terms to compensate the mineral owner at once for loss of value arising from the liability to support which rested on him after severance of the titles to the minerals and to the surface. This compensation having been paid, the mineral owner was, by sections which have a separate and distinct purpose, restrained from working his minerals excepting under such conditions as might be imposed by the Railway Board in the interest of the safety of the public."

Again at p. 96 after a reference to the relevant sections of the Railway Act, Viscount Haldane said:—

> "The sections referred to are those which appear to be most important for the purposes of the present question. Their Lordships interpret them as meaning that there is to be an immediate claim for compensation for

the value of the lands taken and for injurious affection of any other hereditaments the title to which is affected, such as subjacent or adjacent mines and minerals. In default of agreement they think that the entire amount of compensation is to be ascertained by the arbitrators as at the date of the deposit of the plans and once for all. For the rest the mine owner remains entitled to his minerals but subject to any obligation of natural support which attaches on severance. The Board is to regulate the exercise by him of his remaining rights in the future, and the primary purpose of the intervention of the Board is to be the protection, not of the mineral owner or of the railway, but of the public. If the Board refuses him leave to work, his grievance is against the Board, to whom, and not to the railway company, his application is to be made. The principle on which the Legislature has proceeded is apparently to dispose of the claim against the company once for all on the occasion of taking the land."

It has not and could not successfully be contended that the agreement and transfer in the present case had not in law the same effect as an award. The consideration paid by the railway company clearly covered all damages for being deprived of the coal directed by the order of the Railway Board to be left for the support of the right of way. This is demonstrated very clearly by the copies of the proceedings filed.

The order of Mr. Justice Scott, above referred to, shows that the application of the railway company was among other things to determine the amount payable into court as security for the payment of any compensation to which the *parties entitled to mineral right in said lands* may be found entitled. The determination of this amount was postponed until the Board of Railway Commissioners had delivered judgment on the application of Kelly and others to work the mines under the right of way. Judgment in this application was delivered on March 20, 1913, and on May 15, 1913, Harvey, J., fixed the amount of compensation at $4,000, which was paid into court.

On March 8, 1914, the agreement for sale by Kelly to the railway company was executed, and on March 18, 1914, the $4,000 paid into court "as security for the payment of any compensation to which parties entitled to mineral rights in said lands may be found entitled" was paid out to the railway company under an order of Stuart, J., "upon the solicitors for the owner of the abovementioned quarter section consenting thereto."

Before leaving this point I must refer to an argument made by Mr. Woods in reference to certain implications which he claimed should be drawn from the agreement between the railway company and Robert Kelly and the latter's subsequent transfer to the company. Mr. Woods called attention to the fact that in the notice to treat the railway company offered Kelly $3,769.50, while the consideration mentioned in the transfer is only $2,922.16.

Mr. Woods contends that the proper inference to be drawn from these facts is that Robert Kelly did not intend and did not agree by anything that he did in 1914 that he would not apply to the Board for leave to remove the coal, and in any event that he would not ask for compensation.

The affidavits of value attached to the notice to treat show the value of the land and minerals as follows:—

Land	$ 877 00
Damages to land exclusive of coal rights	1,500 00
Coal rights 27·85 acres at $50 per acre	1,392 50
	$3,769 50

Before the agreement was arrived at application had been made for leave to work the coal under the railway, and under the order of the Board the area of coal rights which the applicants were not permitted to work was reduced to

11 3/100 acres. This may explain why the consideration was reduced, but whatever the reason may be, no inference can be drawn from the circumstance which does away with the effect of the transfer.

Again, the matter may be looked at from another angle. Suppose the railway company had never started expropriation proceedings but had agreed on a price to be paid Robert Kelly, who had then executed the transfer, what would have been its effect in so far as the question of support is concerned? Under the authority of the Davies Case, as well as numerous other cases, the effect of the transfer would have been to convey not only the right of way, but also, by implication, all reasonable subjacent and adjacent support.

In London and North Western Railway Company v. Evans, 1893, 1 Ch. 16, Bowen, L.J., at p. 27 laid down the law as follows:—

> "In dealing with an ordinary grant of lands it is undoubted law that, where such a grant is made for a specific purpose, such as the construction on the lands of a house, canal, railway, or other permanent work, the grant, in the absence of a contrary intention appearing on its face, carries with it by implication the right of reasonable and necessary support for the works so to be erected from the subjacent or adjacent lands of the grantor. This maxim of law and of good sense applies whether the grant is voluntary or under the compulsory powers of a statute."

The position then is that although Robert Kelly has been paid for injurious affection to adjacent minerals, his successors in title now ask the railway company to pay over again. To support such a claim the applicants invoke section 198 of the present Railway Act which was first passed in 1919. This section, in my opinion, has no bearing on the present application. It was clearly not intended to give an owner of minerals, who had been fully compensated in damages, a new substantive right to recover further damages, nor was it intended to take away from a railway company rights which it had acquired prior to the passing of the section. If authority is required for this position, it will be found in the case of The Caledonian Railway Company v. Sprot, 2 McQueen 449.

> Sprot in 1834 sold to the railway company land for its right of way and in the deed of conveyance reserved " always to me and my heirs and successors the whole mines and minerals of whatever description with full power to search for, work, mine, etc."
>
> Sprot continued to work his minerals until 1848, when he received notice from the company that his works were endangering the line.
>
> The House of Lords held that independently of any parliamentary enactment, the effect of that conveyance was to convey the land to the company together with a right to all reasonable subjacent and adjacent support.
>
> Sprot relied on the provisions of the Railways Clauses Consolidation Act, 1845, which completely altered the law in England. Under sections 77 to 85 of this Act, so far as concerns mines and minerals under the railway, the company is deprived of the natural right to support and the owner may work the minerals in such a way as to let down the surface, but he must first give the company thirty days' notice of his intention, and the company may then, if it is willing to pay compensation, give him a counter notice, and so, on paying compensation, stop the working.
>
> The Lord Chancellor said at p. 458:—
>
> > " This clause cannot interfere with the pre-existing rights of the company which they acquired ten years before this last Act became law. The legislation certainly did not intend to give to the mine-owner as against the company rights which he had previously sold

to them; and when the Act of 1844 passed, Mr. Sprot had no right to work his mines in any way which would interfere with the security of the railway."

See also North Eastern Railway Company v. Crossland, 32 L.J. Ch. 353.

Elliott v. North Eastern Railway Company, 10 H.L. c. 333.

Great Western Railway Company v. Cefn Brick Company, 1894, 2 Ch. 157.

For the reasons which I have given I would dismiss the application.

April 18, 1933.

Commissioner Stone concurred.

ORDER No. 49760

In the matter of the application of Mrs. Elizabeth Berg and Penn Coals, Limited, hereinafter called the "Applicants," under Section 197 of the Railway Act, for an Order fixing compensation payable to them for and in respect of coal mines and minerals in and under that portion of the Northeast Quarter of Section 8, Township 55, Range 24, West 4th Meridian, in the Province of Alberta, that is comprised within the right of way of the Northern Alberta Railways Company, from which the Applicants are prevented from taking coal and working, and for incidental damage.

File No. 38556

THURSDAY, the 20th day of April, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
G. A. STONE, *Commissioner.*

Upon hearing the application at the sittings of the Board held in Edmonton, March 29, 1933, in the presence of counsel for the applicants, the Northern Alberta Railways Company, and the province of Alberta, and what was alleged,—

It is ordered: That the application be, and it is hereby, dismissed.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 49762

In the matter of the application of the Canadian National Railways, hereinafter called the "Applicants" for permission to issue and file, on less than statutory notice, a supplement to tariff C.R.C. No. E-1504, for the purpose of correcting a clerical error in Supplement No. 19 to the said tariff.

File No. 27612.73.

THURSDAY, the 20th day of April, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

Upon its appearing that, through clerical error, a rate of 6 cents per 100 pounds, published in Supplement No. 19 to Tariff C.R.C. No. E-1504 on newsprint paper from Dalhousie, New Brunswick, to Kingsey, Quebec, was not indicated as being applicable on shipments destined to points in the United States only,—

It is ordered: That the applicants be, and they are hereby, permitted to issue and file, upon three days' notice, a supplement to the said Tariff C.R.C.

No. E-1504 providing for the following note in connection with the rate of 6 cents per 100 pounds on newsprint paper from Dalhousie, New Brunswick, to Kingsey, Quebec, namely:—

"Proportional rate: applicable only on shipments destined to the United States routing via Detroit or Port Huron, Michigan, to which no through rates are in effect."

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 49764

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.8

FRIDAY, the 21st day of April, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the toll published in Tariff C.R.C. No. 46, filed by the Sydney and Louisburg Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll which but for the said Act would have been effective in lieu of that published in the said Tariff C.R.C. No. 46, approved herein, is 24 cents per 100 pounds.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 49770

In the matter of the application of the Niagara Lower Arch Bridge Company, Limited, hereinafter called the "Applicant Company," for approval of Supplement No. 3 to Tariff C.R.C. No. 1, covering tolls to be charged for the use of the Lower Arch Bridge at Niagara Falls, on file with the Board under file No. 36795.8.

SATURDAY, the 22nd day of April, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

Upon the report and recommendation of the Assistant Chief Traffic Officer of the Board,—

It is ordered: That the applicant company's said Supplement No. 3 to Tariff C.R.C. No. 1, covering tolls to be charged for the use of the Lower Arch bridge at Niagara Falls, on file with the Board under file No. 36795.8, be, and it is hereby, approved.

C. P. FULLERTON,
Chief Commissioner.

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The Board of

Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

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This publication is issued fortnightly, on the 1st and 15th of each month. Annual subscription, $3.00; single numbers, 20 cents; in quantities, 25 per cent discount. Remittances should be made to the King's Printer, Ottawa, by postal money order, express order or accepted cheque. The use of currency for this purpose is contrary to the advice of the postal authorities and entails a measure of risk. Postage stamps, foreign money or uncertified cheques will not be accepted. No extra charge is made for postage on documents forwarded to points in Canada and in the United States, but cost of postage is added to the selling price when documents are mailed to other countries. Early application should be made for copies in quantities. Subscriptions should be sent, in every case, to the King's Printer, Ottawa.

Application of the Dominion Biscuit Company, Vancouver, B.C.; Famous Foods, Limited, Vancouver, B.C.; et al, *for an order directing the railway companies to apply the export freight rates on wheat and flour when processed and manufactured into macaroni, vermicelli, spaghetti, noodles, biscuits, etc., for export.*

File No. 30686.15

JUDGMENT

By the Board:

Rates on wheat and flour from prairie points to Vancouver for export are considerably lower than the rates applying on the same commodities when for domestic consumption. The low export rates have as a background, the establishment of rates on a substantial parity with statutory rates fixed from the same points of origin to the Canadian head of the lakes. Flour purchased by the applicants and used in Vancouver in the manufacture of biscuits, macaroni, etc., hereinafter referred to as macaroni products, pays the domestic rate and these manufactured products are sold within Canada as well as exported. The applicants do not buy wheat and they do not make the flour which is used in the manufacture of macaroni products. They purchase the flour from millers at Vancouver or elsewhere.

Their application is that, upon proof of exportation of a given weight of these products, the rate on a similar weight of flour shipped into Vancouver, or on wheat into Vancouver and there milled into flour, should be reduced by refund from the domestic to the export rate. If the flour is purchased from a miller at Vancouver, it would seem to require some arrangement with said miller whereby the refund should be paid to the macaroni products manufacturer instead of to the actual consignee to whom the wheat or flour was shipped.

Applicants state extensive markets are available to British Columbia manufacturers in the Orient, New Zealand, and United Kingdom, but they are considerably hampered in their efforts to compete in these markets under present rates as against competitors in the United States, Australia, Italy, France, Germany, etc. It is shown that the Orient, New Zealand, and United Kingdom are large consuming markets, supplied largely by the United States, Australia, Italy,

and France. Figures were given showing that Canada imports macaroni from other countries, although the amount is decreasing; that the volume of macaroni products exported from Canada has increased materially during the past three years. The rail rate on flour used in the manufacture of macaroni products is only one factor of the transportation charge, as there is also involved a long water haul by carriers whose rates are not subject to regulation. It is apparent that many features influence the marketing of macaroni products and the evidence given was not at all conclusive that the exportations from these foreign countries would be displaced by the Canadian product as a result of the change in freight rates applied for.

In written submissions it was urged that "in the interests of greater export trade in the commodities mentioned, the railways should be requested to extend the principle of applying low export rates on wheat and flour to the products made therefrom in order that goods, which can be produced in excess of the domestic requirements, may be taken to foreign markets and there disposed." Counsel for applicants apparently recognized that the power of the Board does not extend beyond dealing with the reasonableness of rates, or unjust discrimination, and that, as stated by the Board on so many occasions, it is not its function, nor has it the power, to direct reductions in rates for the sole purpose of assisting in building up export trade, or for the purpose of equalizing costs of production, or geographical, climatic or economic conditions. In argument at the hearing, counsel for applicants stated (p. 558):—

> "To suggest that the application itself is founded on a request for assistance to meet a trade condition prevailing in any country is not the case. We are asking for the removal of a discriminatory rate."

The grounds, upon which it is alleged unjust discrimination exists, were defined by counsel for applicants as follows:—

> "The question is why, if we are going to give an export rate on wheat in one form, we should not give the same export rate to wheat in another form." (P. 558.)
>
> "We do, however, complain that the rate is unjustly discriminatory and unjustly preferential, in that it permits one consignee in Vancouver of a wheat product to get one rate and another consignee of a wheat product in Vancouver to get a totally different and much higher rate." (P. 561.)

Flour and macaroni products are here referred to as wheat products. As a matter of fact, macaroni products are not products of grain, but products of a grain product, and in the same category as biscuits, bread, crackers, matzos, pretzels, etc. Flour is the raw material used in the manufacture of the various commodities named. The commodities in question are entirely dissimilar from a transportation standpoint with respect to weight, bulk, volume, value, risk, uses, etc. They are not sold in competition with each other. Under the provisions of the Canadian Freight Classification, biscuits, cakes, crackers, matzos, pretzels, and bread take 4th class carload rating. Macaroni, noodles, spaghetti, and vermicelli are rated 5th class in carloads. Flour (grain) is rated 8th class carload. These differences in ratings recognize the differences in transportation characteristics based on which classification ratings are established. In addition, there may be lower commodity rates varying in different parts of the country, established to meet particular conditions, and flour usually moves under commodity rates.

The railway companies stated that this application, in substance, asks the Board to direct them to publish: (*a*) a stop-off arrangement for milling of wheat originating at prairie points, milled into flour at Vancouver, and then converted into macaroni products; (*b*) that the same arrangement apply on flour brought

into Vancouver for the same purpose; (*c*) that the export rates be applied on such wheat or flour. The carriers pointed out that the application involves what is really a double transit privilege, i.e. first, the manufacture of wheat into flour and, second, the manufacture of flour into another product; that to prove discrimination it would be necessary for applicants to submit proof of similar arrangements on similar commodities; that, in fact, no such arrangement exists at any point in Canada, nor on any other commodities, nor within the United States.

The railway companies pointed out that it would be just as logical to request the application of a similar arrangement to countless finished products of other commodities, for example, for a manufacturer of furniture at a seaport to request that on lumber hauled by rail into the port and converted into furniture, charges should be refunded down to the basis of the export rate on lumber. Counsel for applicants was asked: "If lumber was turned into furniture, would you be exporting lumber if you were exporting that furniture?" and, in argument, expressed the opinion that there would be considerable merit and justification in favour of such a proposition, but that he was not called upon to argue that matter. It is, however, a feature that has to be given consideration by the Board.

It was further pointed out by the railway companies that if such an arrangement were established at the Pacific seaboard, to avoid discrimination it would have to be extended to wheat shipped to an inland point, there milled into flour, the flour then being forwarded to another intermediate inland point for conversion into macaroni products, and the latter forwarded to the seaboard for export, the charge for the entire haul being based on the export rate on wheat from original point of shipment to the seaboard, plus nominal stop-off charges for milling and for conversion into the manufactured product.

There are macaroni manufacturing plants at inland points in both Eastern and Western Canada. There are also plants at Montreal who would, undoubtedly, demand the same arrangement to enable them to compete with the Vancouver manufacturer in the United Kingdom, etc., markets.

Applicants' reply to this is that they have not asked for any such extension, but this is not an effective answer, so far as concerns consideration of the matter by the Board, whose duty it is to prevent unjust discrimination, because the extension described would have to be made in order to avoid unjust discrimination. There has been no application from the macaroni products manufacturers in any other part of Canada for the establishment of an arrangement such as here applied for.

It is quite obvious that to accord and confine an arrangement such as applied for to the seaboard manufacturers would be to create a situation whereby the manufacture of raw materials into finished products for export could only be successfully accomplished at the seaboard and prohibit interior manufacturers from engaging in an export business on the same commodities. No such unjustly discriminatory arrangement could be permitted or directed by the Board.

If, as expressed by applicants, the export rate applying on wheat in one form should be given to the product of wheat in another form, to be logical and consistent, the same principle should apply on shipments within Canada also. Flour and macaroni products take different rates within Canada and the applicants are not asking for any change in the rates on macaroni products between Canadian points.

No arrangement such as applied for is in force in the United States, nor is it shown that United States manufacturers exporting large quantities of macaroni products are operating under any more favourable rate arrangements than apply in Canada and the record does not show that the Canadian manufacturer is not

in as favourable a position as the United States manufacturer with respect to exports to other countries. The question of rates on cereal products as compared with macaroni products in the United States, the latter being higher, has been before the Interstate Commerce Commission on more than one occasion and that Commission has held that macaroni products are not entitled to the same rates as cereal food preparations, 50 I.C.C., 289, and 81 I.C.C., 108.

Analyzing applicants' contentions and the extension thereof that would be necessary to avoid unjust discrimination, it is found there is involved the following propositions: (1) That all the products of the same basic commodity should be given the same rate, regardless of the many differences in the transportation characteristics thereof which justify differences in rates. (2) It goes further and would mean the application of the rates applying on raw materials to all the products made therefrom. The mere expression of the propositions indicates the radical nature thereof and seems to require little comment. If the revenues of the railway companies are to be preserved, the propositions involve sweeping reductions in rates on manufactured articles with respect to which the present rates are not shown to be unreasonable and this would involve increases in rates on raw material of low value that cannot stand an increase.

Upon the grounds advanced by applicants, no unjust discrimination is found to exist and the application is refused.

Ottawa, Ont., April 21, 1933.

ORDER No. 49780

In the matter of the application of the Dominion Biscuit Company, Limited; Famous Foods, Ltd.; Catelli Macaroni Products Corporation, Ltd.; Vancouver Milling and Grain Co., Limited; Atlas Flour Mills, Limited; National Biscuit and Confection Co., Ltd.; and Ramsay Bros. & Company, Limited, all of Vancouver, British Columbia, for an Order directing the railway companies to apply the export freight rates on wheat and flour when processed and manufactured into macaroni, vermicelli, spaghetti, noodles, biscuits, etc., for export.

File No. 30686.15

Tuesday, the 25th day of April, A.D. 1933.

Hon. C. P. Fullerton, K.C., *Chief Commissioner.*
G. A. Stone, *Commissioner.*

Upon hearing the application at the sittings of the Board held in Vancouver, March 27, 1933, in the presence of counsel for and representatives of the applicants, the Canadian Pacific Railway Company, and the Canadian National Railways, and what was alleged,—

It is ordered: That the application be, and it is hereby, refused.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 49781

In the matter of the application of the Detroit and Windsor Subway Company and the Detroit and Canada Tunnel Company, hereinafter called the "Applicant Companies," for approval of Tariff C.R.C. No. 15, covering tolls to be charged in respect of the Detroit Tunnel, on file with the Board under file No. 35943.5.

TUESDAY, the 25th day of April, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*
Hon. T. C. NORRIS, *Commissioner.*

Upon the report and recommendation of the Assistant Chief Traffic Officer of the Board,—

It is ordered: That the applicant companies' said Tariff C.R.C. No. 15, covering tolls to be charged in respect of the Detroit Tunnel, on file with the Board under file No. 35943.5, be, and it is hereby, approved.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 49784

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13

MONDAY, the 24th day of April, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the tolls published in Tariff C.R.C. No. 880, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls which but for the said Act would have been effective in lieu of those published in the said Tariff C.R.C. No. 880, approved herein, are published in Tariff C.R.C. No. 786, except upon fresh fruits, the normal tolls on which are, from Halifax, Nova Scotia, as follows:—

To	Rates in cents per 100 pounds
Windsor, N.S.	40
Hantsport, N.S.	
Wolfville, N.S.	
Port Williams, N.S.	
Canning, N.S.	50
Kingsport, N.S.	
Kentville N.S.	46½
Centreville, N.S.	
Sheffield Mills, N.S.	
Hillaton, N.S.	
Coldbrook, N.S., to Middleton, N.S., inclusive	52½
Billtown, N.S., to Weston, N.S., inclusive	

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 49792

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13

THURSDAY, the 27th day of April, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the tolls published in Tariff C.R.C. No. 879, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls which but for the said Act would have been effective in lieu of those published in the said Tariff C.R.C. No. 879, approved herein, are contained in Tariff C.R.C. No. 745, with the exception of item No. 10, the normal tolls for which are as follows:—

From	To	Cents per 100 pounds
Halifax, N.S.	Yarmouth, N.S.	16½
	Truro, N.S.	9½

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 49794

In the matter of the joint application of the Canadian Pacific Railway Company and the Canadian National Railways, hereinafter called the "Applicants," for permission to make effective, on one day's notice, a supplement to their respective Tariffs C.R.C. No. E-4632 and C.R.C. No. E-1979, changing the application of certain rates issued to meet motor truck competition.

File No. 27612.74

FRIDAY, the 28th day of April, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

Upon the report and recommendation of the Assistant Chief Traffic Officer of the Board,—

It is ordered: That the applicants be, and they are hereby, permitted to make effective, on one day's notice, a supplement to Canadian Pacific Railway Tariff C.R.C. No. E-4632 and Canadian National Railways Tariff C.R.C. No. E-1979, changing the application of certain rates published to meet motor truck competition.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 49824

In the matter of the application of G. Solway & Sons, Limited, of Toronto, Ontario, for an Order directing the Canadian National Railways to refund to the Applicants alleged overcharges on four cars of scrap malleable iron shipped by the Applicants from Canadian National stores at Val Royal, Quebec, to Montreal (Point St. Charles Station), which were reconsigned to Cote St. Paul Station.

File No. 27001.19

THURSDAY, the 4th day of May, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*
Hon. T. C. NORRIS, *Commissioner.*
J. A. STONEMAN, *Commissioner.*

Upon hearing the application at the sittings of the Board held in Toronto, May 3, 1933, in the presence of counsel for the Canadian National Railways, no one appearing for the applicants,—

It is ordered: That the application be, and it is hereby, dismissed.

C. P. FULLERTON,
Chief Commissioner.

ACCIDENTS REPORTED TO THE OPERATING DEPARTMENT, BOARD OF RAILWAY COMMISSIONERS, FOR MONTH OF FEBRUARY, 1933.

Railway accidents	134, with	22 persons killed and	121 injured.
Railway accidents at highway crossings	14, with	2 persons killed and	17 injured.
	148	24	138

	Killed	Injured
Passengers	1	10
Employees	12	102
Others	11	26
	24	138

DETAILS OF ACCIDENTS AT HIGHWAY CROSSINGS

No. of Accidents	
	QUEBEC
1	Auto truck—Que. licence FM-255.
1	Pedestrian.
	ONTARIO
7	Automobile—Ran into side of train. Ont. licences P-9425, R-3771, M-2224, JA-254, FH-130, 38446-C, 6-288-X.
5	Automobile—Ont. licences LJ-73, MU-815, 48-924C, 19123C, 56061C.

Of the fourteen accidents at highway crossings, ten occurred at unprotected crossings and four at protected crossings. Nine of the accidents occurred during the daylight hours and five at night.

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The Board of

Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

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Application of the Canadian Pacific Railway Company for an order directing that the township of East York and the town of Leaside reimburse the Canadian Pacific Railway Company the amounts expended in cleaning and painting the steel work of the Leaside subway; and that the township of East York and the town of Leaside assume the cost of future maintenance of said subway.

File 34833.

JUDGMENT

McLEAN, ASSISTANT CHIEF COMMISSIONER:

Order No. 38443 of November 22, 1926, authorized the corporation of the township of East York and the corporation of the town of Leaside to construct and maintain a highway known as the East York Leaside Viaduct, and plans were filed showing the nature and extent of the work. In launching the application on which this order is based the applicants had asked that the railways should contribute to the cost of the subway by means of which the highway was carried under the tracks of the Canadian Pacific. A further request was that contribution should be made out of the Grade Crossing Fund. The Canadian National and Canadian Pacific Railway consented but without prejudice to their contention that they were not liable and should not be required to contribute to the cost of any part of the viaduct referred to in the order. The order reserved leave to the applicants to apply for an order directing the Canadian Pacific Railway and/or Canadian National Railways to contribute to the cost of that portion of said viaduct within the limits of the right of way of the Canadian Pacific Railway Company. It also provided that such part of the application as asked for a payment out of the Grade Crossing Fund should be reserved to be determined by the Board after due hearing at a future date.

The parties whom the Board knew as making application were the township of East York and the corporation of the town of Leaside.

An amending Order No. 38548 of December 16, 1926, issued on consent. Order No. 38443 had set out that the part of the viaduct within the limits of the right of way of the Canadian Pacific Railway Company was to be of such design as to preserve the unrestricted use of the full right of way of the railway company. Order No. 38548 amended this by substituting the provision setting out the right of way of the railway company for a width of 120

feet instead of the full width of the right of way as set out in Order No. 38443. It is reaffirmed that nothing contained in the order is to prejudice or affect the contention of the railway companies, or either of them, that they are not liable and should not be required to contribute to the cost of any part of the viaduct referred to in Order No. 38443 or Order No. 38548.

There was set down for hearing on November 14, 1927, the application of the corporation of the township of East York and the corporation of the town of Leaside for a direction to the Canadian Pacific Railway Company and/or the Canadian National Railways to contribute to the cost of that part of the viaduct within the limits of the right of way of the Canadian Pacific Railway Company, and also that payment of part of the cost of said viaduct be ordered from the Railway Grade Crossing Fund.

Judgment was rendered by the late Chief Commissioner McKeown under date of December 19, 1927, and Order No. 40043 of December 20, 1927, implementing the judgment, issued. The judgment sets out that at the hearing on November 14, 1927, the applicants stated that, with permission of the Board, they would proceed only under the application for a contribution from the Railway Grade Crossing Fund.

The application for a contribution from the railway companies as to cost of viaduct having been withdrawn, Order No. 40203 of January 12, 1928, issued dismissing the application.

By Order No. 39905 of November 22, 1927, authorization was given the Canadian Pacific Railway Company to use and operate a subway under its railway at Leaside.

Approximately five years elapsed before the question of maintenance and the cost of same was raised in connection with this work. It appears from the submissions made that no expenditure for maintenance had been necessary until nearly the end of the five-year period.

Under date of May 30, 1932, application was made by the Canadian Pacific Railway Company setting out that it had expended in cleaning and painting the steel work of the Leaside subway the sum of $304.78 in August, 1931, and the sum of $678.15 during September, 1931. Bills for these amounts had been submitted to the township of East York, but payment was refused by the municipality. The clerk-treasurer of the town of Leaside advised the Canadian Pacific Railway company's general agent at Toronto that he could find nothing in the agreement nor in the Leaside Viaduct Act placing any burden for repairs to this subway on the town of Leaside. The sum involved for maintenance is estimated at $200 per annum.

As pointed out, the municipalities concerned applied for (*a*) aid in respect of a contribution of cost from the railways; and (*b*) a contribution from the Grade Crossing Fund.

A grant from the Grade Crossing Fund can be made only in connection with actual construction work and, therefore, no grant can be made from it in aid of maintenance. An application that the railways should contribute to the cost is not, however, so limited, and it is open in connection with questions of cost to consider, not only the construction cost, but the continuing cost, that is, the upkeep or maintenance cost. The applicants, through counsel, applied for a grant out of the Grade Crossing Fund, and decided not to pursue their application for a contribution of cost in the case of the railways, and distinct from the Grade Crossing Fund.

In connection with the work of this nature, there must be considered, not only the cost of construction, but the question of upkeep or maintenance. A reasonable maintenance charge is as essentially a part of the cost as the cost of construction itself. The order is, it is true, silent as to maintenance, but I do not think, in view of what is on record in regard to the discussions both

at the hearing and in correspondence filed, that there can be inferred from this an intention that the maintenance charge should be borne by the railway. In this case the greater, namely, the cost of construction, was by consent directed to be borne by the applicants. I think the lesser, the maintenance charge, should be given the same treatment as the greater, the cost of construction charge.

Order should go directing the township of East York and the town of Leaside to reimburse the Canadian Pacific Railway the amount set out in these reasons for judgment, and to assume the cost of future maintenance of the subway. If the municipalities cannot agree as to the amount of the maintenance or the apportionment of same between themselves, the matter will be settled by an Engineer of the Board.

May 8, 1933.

Commissioners Norris and Stoneman concurred.

ORDER No. 49862

In the matter of the application of the Canadian Pacific Railway Company for an Order directing the Township of East York and the Town of Leaside, in the Province of Ontario, to reimburse the Company the amounts expended by it in cleaning and painting the steel work of the subway under its tracks at Leaside, which the said municipalities were authorized to construct under the Order of the Board No. 38443, dated November 22, 1926.

File No. 34833

THURSDAY, the 11th day of May, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*
Hon. T. C. NORRIS, *Commissioner.*
J. A. STONEMAN, *Commissioner.*

Upon hearing the application at the sittings of the Board held in Toronto, May 3, 1933, in the presence of counsel for the Canadian Pacific Railway Company, the town of Leaside, and the township of East York, and what was alleged,—

It is ordered:

1. That the township of East York and the town of Leaside be, and they are hereby, directed to reimburse the Canadian Pacific Railway Company the sum of nine hundred and eighty-two dollars and ninety-three cents ($982.93), being the amount expended by the company in August and September, 1931, in cleaning and painting the steel work of the subway under its tracks at Leaside, in the province of Ontario; and that the cost of future maintenance of the subway be borne and paid by the said municipalities.

2. That if the said municipalities cannot agree as to the amount of the maintenance, or the apportionment of the same between themselves, the matter be settled by an engineer of the Board.

C. P. FULLERTON,
Chief Commissioner.

Application of the Canadian National Railways for an Order of the Board (similar to Order No. 46191 in connection with the Winnipeg Street Subway at Regina, Sask.) directing that the City of Brantford pay to the Railway Company one-half of the balance still owing from the Railway Grade Crossing Fund, together with interest thereon at five per cent per annum from the date of expenditure, in the matter of subway at West Street, Brantford, Ont.

File No. 26765.102

JUDGMENT

McLean, Assistant Chief Commissioner:

Application was made by the Canadian National Railways on March 14, 1933, asking that, in accordance with the judgment of the Board rendered January 12, 1933, in connection with the Winnipeg Street Subway at Regina (22 Judgments and Orders, p. 287), an order should be issued providing the city of Brantford be ordered to pay to the railway company one-half of the balance still owing from the Grade Crossing Fund, together with interest thereon at 5 per cent per annum from the date of expenditure.

By Order No. 42365 of March 27, 1929, the application of the city of Brantford for leave to construct a subway under the Canadian National Railways on West street, and to close George street in the city of Brantford, was dealt with by granting permission to the applicant to construct said subway; the work to be commenced within one year and completed within two years from the date of the order. Provision was made for a contribution from the Grade Crossing Fund of 40 per cent of the cost, not to exceed the sum of $100,000; 40 per cent to be paid by the Canadian National Railways and 20 per cent by the applicant municipality, the cost of maintaining the street surface, pavement and sidewalks, including drainage and lighting, to be borne and paid by the applicant, the remainder of the cost of maintenance to be at the expense of the railway company. Provision was made that George street was to be closed after the construction of the proposed subway was completed.

By Order No. 45019 of July 9, 1930, Order No. 42365 was amended by providing that the Canadian National was to be directed to construct the subway. No variation was made in the percentages of distribution.

By Order No. 47130 of July 29, 1931, the railway was authorized to operate its tracks over the subway at West street.

In the Winnipeg Street Subway Case the financial position of the railway and the limitations in point of contribution from the Grade Crossing Fund were set out. It is under similar circumstances that the railway is here applying.

Exception was taken by counsel for the city of Brantford on the ground of jurisdiction. Counsel at the same time stated that he was aware that the Chief Commissioner had, in connection with the Winnipeg Street Subway Case, stated that the question of jurisdiction had been considered, and it had been concluded there was jurisdiction. He stated further this was to be found in the notes of evidence.

Counsel gave a summary of the steps leading up to the construction of the West street subway in Brantford. He stated, in the first instance, an application was made for a permissive order; the object of this being to ascertain before a commitment was made what proportion, if any, of the cost of the subway the city would be called upon to bear. He said that it had been the position of the city that it should not be called upon to pay any part of the cost of the subway. He stated further that time was desired to permit the property owners of Brantford to vote on the expenditure of money.

I am of opinion that the jurisdictional question raised is governed by the findings of the Chief Commissioner in the Winnipeg Street Subway Case.

Counsel for the railway stated that while the balance of the cost in the Winnipeg Street Subway Case was to be paid equally by the railway company and the city, he had no doubt that it was put on this basis because it was divided in the same way in which the apportionments were fixed before; and he stated that he would be content to have an order whereunder the city of Brantford, instead of paying one-half of the cost, would pay on the same basis in which they and the railway company were now paying in cases other than that provided for by the Grade Crossing Fund, that is to say, the city pays 20 per cent, and the railway 40 per cent, or, in other words, the city of Brantford will pay one-third of the balance.

When the application was launched, the total commitment out of the Grade Crossing Fund for the subway amounted to $100,000. Pro rata payments of this amounting to $41,920 have been made. This leaves a balance owing of $58,080. Since the date of the hearing a further pro rata payment amounting to $16,843.20 has been provided for. This leaves $41,236.80 still to be paid out of the Grade Crossing Fund. One-third of this is $13,745.60.

Order should go providing that the sum of $13,745.60 be paid to the company by the city, with interest at five per cent per annum on one-third of $58,080, or $19,360, from the date of expenditure to the dates of payment of the sum of $5,614.40 to the railway by the Board, and the said sum of $13,745.60 to the railway by the city, provided that as and when the Board shall be in a position to make payments from the Grade Crossing Fund, the city shall be entitled to be repaid by the Board the said amount of $13,745.60.

Commissioners Norris and Stoneman concurred.

May 10, 1933.

ORDER No. 49876

In the matter of the application of the Canadian National Railways for an Order directing the City of Brantford, in the Province of Ontario, to pay to the said Railway Company an amount equal to one-half of the balance still owing from the Railway Grade Crossing Fund, with interest thereon at five per cent per annum from the date of expenditure until the date of payment, in connection with the subway constructed under the Canadian National Railways on West Street, in the said City of Brantford, under the Order of the Board No. 42365, dated March 27, 1929, as amended by Order No. 45019, dated July 9, 1930.

File No. 26765.102

MONDAY, the 15th day of May, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*
Hon. T. C. NORRIS, *Commissioner.*
J. A. STONEMAN, *Commissioner.*

Upon hearing the application at the sittings of the Board held in Toronto, May 3, 1933, in the presence of counsel for the railway company and the city, and what was alleged;

And whereas the amount to the credit of the Railway Grade Crossing Fund does not at the present time permit of the payment of the full forty per cent allowed by the said Order No. 42365 towards the cost of construction of the said subway:

It is ordered: That the sum of $13,745.60 (being one-third of $41,236.80, the balance now owing from the Railway Grade Crossing Fund) be paid to the Canadian National Railways by the city of Brantford in connection with the said subway at West street, with interest at five per cent per annum on one-

third of $58,080 ($19,360), the balance owing from the Railway Grade Crossing Fund at the date of the hearing, from the date of expenditure to the 15th day of May, 1933; and interest at the rate of five per cent per annum on the said sum of $13,745.60 from the 15th day of May, 1933, to the date of payment to the railway company by the city: Provided that, as and when the Board shall be in a position to make the said payment out of the Railway Grade Crossing Fund, the city shall be entitled to be repaid by the Board the said amount of $13,745.60.

C. P. FULLERTON,
Chief Commissioner.

Application of the Canadian National Railways for an Order of the Board (similar to that issued re Winnipeg Street Subway at Regina, Order No. 46191) directing the City of Oshawa to pay to the railway company one-half of the balance still owing from the Railway Grade Crossing Fund, together with interest thereon at five per cent per annum from the date of expenditure, in connection with the subway at Simcoe Street, Oshawa, Ont. File No. 228.

JUDGMENT

McLean, Assistant Chief Commissioner:

Application was made by the Canadian National Railways under date of March 14, 1933, in regard to the subway at Simcoe street, Oshawa, Ontario; this being on the same line as in the West Street subway, Brantford, application.

Counsel for Oshawa associated himself in general with the position taken with regard to jurisdiction by counsel for Brantford. He also stressed the unsatisfactory financial condition of the city of Oshawa. The Canadian National in applying had asked for equal division. During the hearing counsel amended his application by proposing that the same division be made of the balance as was provided for under Order No. 45637 of October 22, 1930, viz., 57 per cent payable by the Canadian National Railways; 43 per cent payable by the city of Oshawa. At the date of hearing $27,218.64 had been paid to the railway, leaving a balance of $31,952.33 to be paid the latter from the Grade Crossing Fund. This was reduced by the sum of $555.79 chargeable to the Oshawa Railway on account of paving devil strip through the subway, making the amount due the railway $31,396.54. Since the hearing the Board has been able to make a further pro rata payment to the railway and the city. In the case of the railway this payment is $9,266.18, reducing the amount due the railway from the Grade Crossing Fund to $22,130.36. The city's proportion of this is 43 per cent or $9,516.05. An account has been submitted by the city of Oshawa amounting to $6,805.60. The pro rata payment reduced it by $3,130.58 to $3,675.02. Since the hearing as mentioned above, the Board has been able to make a further pro rata payment of $1,065.76, reducing the sum of the account submitted by the city of Oshawa to $2,609.26. Of this amount the railway is responsible for 57 per cent or $1,487.28.

Order should go providing that the sum of $9,516.05 be paid to the company by the city, with interest at the rate of five per cent on $13,500.51 (being 43 per cent of $31,396.54) from the date of expenditure to the 15th May, 1933, and with interest at the same rate on $9,516.05 from May 15, 1933, to the date of payment to the railway. The order should also provide that the railway pay to the city the sum of $1,487.28, with interest at the rate of five per cent on $2,094.76 (being 57 per cent of $3,675.02) from the date of expenditure to May 15, 1933, and with interest at the same rate on $1,487.28 from May 15, 1933, to the date of payment to the city.

Commissioners Norris and Stoneman concurred.

May 11, 1933.

ORDER No. 49877

In the matter of the application of the Canadian National Railways for an Order directing the City of Oshawa to pay to the said Railway Company an amount equal to one-half of the balance still owing from the Railway Grade Crossing Fund, with interest thereon at five per cent per annum from the date of expenditure until the date of payment, in connection with the subway constructed under the Canadian National Railways at Simcoe Street, in the said City of Oshawa, under the Order of the Board No. 45637, dated October 22, 1930.

File No. 228

MONDAY, the 15th day of May, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*
Hon. T. C. NORRIS, *Commissioner.*
J. A. STONEMAN, *Commissioner.*

Upon hearing the application at the sittings of the Board held in Toronto, May 3, 1933, in the presence of counsel for the Canadian National Railways and the City of Oshawa, and what was alleged;

And whereas the amount to the credit of the Railway Grade Crossing Fund does not at the present time permit of the payment of the full forty per cent allowed by the said Order No. 45637 towards the cost of the construction of the said subway,—

It is ordered:

1. That the sum of $9,516.05 be paid to the Canadian National Railways by the city of Oshawa, with interest at the rate of five per cent per annum on $13,500.51 (being forty-three per cent of $31,396.54), from the date of expenditure to the 15th day of May, 1933; and with interest at the rate of five per cent per annum on the said sum of $9,516.05 from the 15th day of May, 1933, to the date of payment to the railway company.

2. That the Canadian National Railways pay to the city of Oshawa the sum of $1,487.28, with interest at the rate of five per cent per annum on $2,094.76 (being fifty-seven per cent of $3,675.02), from the date of expenditure to the 15th day of May, 1933; and with interest at the rate of five per cent per annum on $1,487.28 from the 15th day of May, 1933, to the date of payment to the city.

3. That, as and when the Board shall be in a position to make payments out of the Railway Grade Crossing Fund, the railway company and the city shall be entitled to be paid by the Board the amounts of $14,101.59 and $10,638.03 respectively.

C. P. FULLERTON,
Chief Commissioner.

Application of Toronto Wholesale Fruit Merchants' Association for a ruling concerning charge assessed for use of refrigerator cars on certain shipments of vegetables from Vancouver and Victoria, B.C., to Toronto, Ontario.

File No. 18855.68.

BY THE BOARD:

This application is for a ruling concerning charge of $10 for use of refrigerator car on a carload shipment of tomatoes from Victoria on May 31, 1932, also on a carload of cauliflower and lettuce from Vancouver on May 30, 1932, both consigned to Toronto. Applicant contends the assessment of the $10 charge was an overcharge.

The tariff governing on these shipments, both as to rate and charge for use of refrigerator car, is Canadian Freight Association (Western Lines) C.R.C. No. 77, issued by agent Thompson. Item 245 therein publishes the rate charged, namely, $1.87½, applying on fresh vegetables, and No. 18 of the Rules and Conditions governing the tariff reads:—

> "When, at the request of shippers, refrigerator cars are supplied for the shipment of vegetables, a charge of $10 per car per trip will be assessed for the use of the car, in addition to the freight charges and heating or refrigeration charges."

While not relevant in so far as these shipments are concerned, it is observed that the rate has since been reduced and the item in question also now provides that "Rule 18, page 15, of tariff will not apply."

The charge in question is authorized by the Board's General Order No. 152, dated November 2, 1915, which permitted the railways, which supply refrigerator cars at request of shippers for the carriage of vegetables in carload lots, to make the charges therein set out and which, for any distance over 1,000 miles, is $10 per trip. Said order is still effective. Applicant's contention is that inasmuch as subsequent to issuance of this order the classification rating on fresh vegetables, carloads, has been advanced from 8th class to 5th class, the charge should not apply on vegetables classifying 5th class or higher. Tariffs of most of the companies in Eastern Canada now contain such a provision for the reason that in this territory green vegetables are usually carried at class rates. The tariffs in Western Canada have not been similarly amended and still provide charges in accordance with General Order No. 152, and the reason seems obvious, namely, that while the carload rating in the Classification is 5th class, these vegetables are still being generally carried between points in Western Canada under commodity tariffs at 8th class rates or lower. While this is informative, it is irrelevant to the issue here, namely, the charge legally provided for by tariff on the two shipments in question.

Applicant refers to Canadian National Railways (Lines West Fort William, Ont., Armstrong, Ont., and East thereof) Tariff C.R.C. No. E-1694 (item 160 therein) and contends that under the provisions of this tariff "it was not the intention of the Canadian National Railways to charge for the use of refrigerator cars loaded with 5th class vegetables between any two points in Canada on their system." Applicant further states: "The previous tariffs did not make it clear as to whether this clause applied between stations in Eastern Canada, or otherwise," but that "this was made perfectly clear" in the tariff above named. The wording in the previous tariff (C.R.C. No. E-1205) was: "Between all Canadian National Railways stations (see exceptions (*a*) (*b*) and (*c*) below)." The wording in the present tariff is "Between all Canadian National Railways stations (see exceptions (*a*) and (*b*) below)." It will be observed that there is no difference in the wording (the exceptions not being pertinent) and, if the previous tariff was not clear, as suggested by applicant, then the current tariff is similarly ambiguous. The reduction symbol to which applicant refers has no significance on this point. In the previous tariff, the item in question, by exception (*a*), was not applicable for movements locally in Eastern Canada between stations between Murray Harbour and Vernon Subdivisions; when the tariff was reissued this exception to the application of the item was eliminated; in other words, formerly certain stations in Eastern Canada were not included in the item, while now all stations in this territory are included and this explains the insertion of the symbol. A reduction symbol was also shown when, in the previous tariff, the non-application of the item to or from points on the former narrow gauge section of Prince Edward Island was removed.

It was stated in application of the Dominion Traffic Association, Volume 21, Board's Judgments, Orders and Rulings, p. 81 at p. 84:—

> "While the various lines operated by the Canadian National Railways System are commonly so described, there is a clear distinction as between various portions of that system in the matter of construction and filing of tariffs. For example, there is a distinct unit described as Grand Trunk Railway System (lines west of Detroit and St. Clair Rivers); another, Grand Trunk Railway System (lines in the United States east of the west bank of the Detroit and St. Clair rivers); another, Canadian National Railways (West Fort William, Ont., Armstrong, Ont., and east thereof); also Canadian National Railways (lines Port Arthur, Armstrong, Ont., and west thereof). Stated briefly, for tariff making purposes, these are four distinct lines and rates are published from points on one of these lines to points on the others under authority of forms of concurrence furnished by the latter."

Tariff C.R.C. No. E-1694 has no application with respect to the shipments here in question. As shown on its title page, also at the top of each page in the tariff, its application is restricted to Canadian National Railways (lines West Fort William, Ont., Armstrong, Ont., and east thereof) and other carriers listed on title page. The Canadian National Railways (lines Port Arthur, Armstrong, Ont., and west thereof) are not initial carriers, or participating carriers party to the tariff. Clearly, the application of the tariff "between all Canadian National Railways stations" is restricted to the scope of the tariff as indicated on the title page and does not, and cannot, under its terms and description and in the absence of specific provision therefor, apply from points on another distinct unit or line, for tariff making purposes, namely, Canadian National Railways (lines Port Arthur, Armstrong, Ontario, and west thereof).

RULING

Upon consideration of the submissions filed and for the reasons herein set out, the ruling of the Board is that agent Thompson's Tariff C.R.C. No. 77 is applicable with respect to the two shipments made in May, 1932, as hereinbefore described, and the charge of $10 per car per trip for use of refrigerator car was lawfully provided for under the provisions of Rule No. 18 of said tariff.

Ottawa, Ont., May 12, 1933.

Complaint of the Canadian Livestock Co-operative of Quebec, Limited, concerning alleged overcharge in switching charges assessed by the Canadian National Railways with respect to four cars of sheep shipped from Waltham, Que., via the Canadian Pacific Railway on October 29, 1932, consigned to complainant at Point St. Charles (Montreal) on the Canadian National Railways.

File No. 28233.21

JUDGMENT

By the Board:

The complainant and the railway companies have set out their position and contentions in written submissions filed with the Board.

Four cars of sheep were shipped from Waltham, Que., on the Canadian Pacific Railway, on October 29, 1932, to Point St. Charles (Montreal) on the Canadian National Railways, and the point at issue relates to the switching charges assessed by the Canadian National Railways for the movement of the cars from Jacques Cartier Junction (its connection with the Canadian Pacific Railway) to Point St. Charles. Complainant claims to have been overcharged.

There is no through rate published, consequently, the traffic is subject to the combination of the rates of the Canadian Pacific and Canadian National Railways to and from Jacques Cartier Junction. The first tariff to be considered is Canadian Pacific Railway C.R.C. E-3876, which governs the movement from Waltham to Jacques Cartier Junction (Montreal). When originally issued in 1921, this tariff provided that Montreal rates would also apply to Montreal Stock Yards, Point St. Charles (via Jacques Cartier Junction), constituting, of course, a through rate. However, in Supplement 15 thereto, effective February 2, 1925 (over seven years before these shipments moved), the rates to Montreal Stock Yards, Point St. Charles, via Jacques Cartier Junction and Canadian National Railways, were withdrawn and cancelled and, since that date, no through rates have been in effect. So far as these shipments are concerned, therefore, this tariff contains the rates, rules and regulations governing the movement solely on the line of the Canadian Pacific Railway; the rates, rules and regulations governing the movement on the Canadian National Railways have to be found in that company's tariff. The tariff contains a rule stipulating that if a double-deck car is ordered by shipper and the railway is unable to furnish same within six days, and furnishes in lieu thereof two single-deck cars, the minimum weight and rate used shall be that fixed for the car ordered. The provisions of this rule applied here and were observed by the railway on the movement to Jacques Cartier Junction. None of the provisions of this tariff applied to the movement of these shipments by the Canadian National Railways.

The tariff of the Canadian National Railways publishing the rate on this traffic is C.R.C. No. E-1456. Item 77 therein names a rate of $4 per car for movements between the interchange with the Canadian Pacific Railway at Jacques Cartier Junction and Montreal Stock Yards, Point St. Charles, which is a haul of 13·6 miles. This is a flat rate per car and the service also includes the return movement of the empty car. This rate was charged on the four cars. There is no provision in the tariff for treating two cars as one and charging accordingly, as contained in the tariff of the Canadian Pacific Railway. Complainant contends the cars should have been so handled and alleges an overcharge of $8, which contention is not, of course, tenable under the reading of the tariff.

Complainant bases its contention on the terms of the live stock contract, quoting that portion thereof reading:—

> "It is mutually agreed as to each carrier of all or any of said live stock, over all or any portion of said route to destination, and as to each party at any time interested in all or any of said live stock, that every service to be performed hereunder shall be subject to all the conditions, whether printed or written, herein contained, and which are agreed to by the shipper and accepted for himself and his assigns."

The live stock contract has a notation thereon "two double-deck cars ordered October 19, four singles supplied October 29." This notation while, no doubt, a statement of fact, does not in itself impose an obligation on either the Canadian Pacific Railway or the Canadian National Railways to treat two cars as one; it contains no contract or undertaking as to the rates to be charged; these, under the terms of the contract, are to be subject to the tariffs in effect. Neither this notation, nor the above quoted portion of the contract, override, in any way, the provision printed at the beginning of the contract, namely, that the live stock is "received subject to the classification and tariffs in effect on the date of issue of the original live stock bill of lading (except when inconsistent herewith)." The charge assessed by the Canadian National Railways was its legal tariff rate and complied and was in conformity with, rather than in violation of, the provisions of the contract.

The complaint will be dismissed.

Ottawa, Ont., May 15, 1933.

ORDER No. 49874

In the matter of the complaint of Canadian Livestock Co-operative of Quebec, Limited, concerning alleged overcharge in switching charges assessed by the Canadian National Railways with respect to four cars of sheep shipped from Waltham, Quebec, via the Canadian Pacific Railway, on October 29, 1932, consigned to complainant at Point St. Charles (Montreal) on the Canadian National Railways.

File No. 28233.21

WEDNESDAY, the 17th day of May, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

Upon reading the submissions filed in support of the complaint and on behalf of the Canadian National Railways and the Canadian Pacific Railway Company,—

It is ordered: That the complaint be, and it is hereby, dismissed.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 49843

In the matter of the application of the Detroit and Windsor Subway Company and the Detroit and Canada Tunnel Company, hereinafter called the "Applicant Companies," for approval of Tariff C.R.C. No. 16, covering tolls to be charged in respect of the Detroit Tunnel, on file with the Board under file No. 35943.5.

MONDAY, the 8th day of May, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

Upon the report and recommendation of the Assistant Chief Traffic Officer of the Board,—

It is ordered: That the applicant companies' said Tariff C.R.C. No. 16, covering tolls to be charged in respect of the Detroit Tunnel, on file with the Board under file No. 35943.5, be, and it is hereby, approved.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 49879

In the matter of the application of the Canadian National Railways, hereinafter called the "Applicants," for permission to cancel, upon less than statutory notice, a rate on wooden handles issued to meet motor truck competition.

File No. 27612.76

THURSDAY, the 18th day of May, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

Upon its appearing that, notwithstanding the reduction in the rate on wooden handles, the traffic will continue to move by motor truck,—

It is ordered: That the applicants be, and they are hereby, permitted to cancel, upon three days' notice, the rate of 10 cents per 100 pounds published on wooden handles, carloads, from Tillsonburg, Ontario, to Hamilton, Ontario, in Tariff C.R.C. No. E-1979.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 49880

In the matter of the application of the Brantford Municipal Railway Commission, hereinafter called the "Applicant," under Section 333 of the Railway Act, for approval of its Standard Tariff C.R.C. No. 1, covering fares on its street railway in the City of Brantford and Province of Ontario, on file with the Board under file No. 38706.

THURSDAY, the 18th day of May, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

Upon the report and recommendation of the Assistant Chief Traffic Officer of the Board,—

It is ordered: That the applicant's said Standard Tariff C.R.C. No. 1, covering fares on its street railway in the city of Brantford, province of Ontario, on file with the Board under file No. 38706, be, and it is hereby, approved; the said tariff, with a reference to this order, to be published in at least two consecutive weekly issues of the *Canada Gazette.*

C. P. FULLERTON,
Chief Commissioner.

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The Board of
Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

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Application of Dome Mines, Limited, South Porcupine, Ont., for a ruling of the Board as to the legal rate on a shipment of flint grinding pebbles, which moved from Montreal Wharf, ex Denmark, to South Porcupine, in July, 1932.

File No. 38663

JUDGMENT

By the Board:

The applicant and the railway company filed written submissions setting out their position and contentions respecting the matter at issue and requested that the case be disposed of upon such submissions and without a public hearing.

The shipment here in question is described as consisting of "636 bags flint pebbles," used in applicant's mills for grinding purposes. It was charged the 10th class domestic rate plus 4 cents per 100 pounds for Montreal terminal charge under item 5, page 259, of Canadian Freight Classification No. 18 and Canadian National Railways Tariff G.T. C.R.C. No. E-3461. Applicant claims the lower mileage scale of rates published on stone (cobble or field) in Tariff C.R.C. No. E-1680 should have applied.

Applicant submits authorities defining cobbles, or cobblestones, as rounded stones approximately 2½ inches to 10 inches in diameter; pebbles being defined as rounded stones ⅙ inch to 2½ inches in diameter; states the stones in this shipment were 3 inches and over, but under 10 inches in diameter and, therefore, "outside the pebble category, but definitely within the cobblestone class." It is not apparent that the authorities cited cover specifically these so-called flint grinding pebbles (which is a recognized trade name for these articles), imported from Europe and which are gathered on the beaches in certain areas and assorted according to sizes, which may range from 1 to 6 inches in diameter.

In the Canadian Freight Classification there is an item reading "Cobble, Field or Rubble" and another separate item reading "Grinding Pebbles, used in pulverizing mills"; both are under the heading "Stone." In the sense in

64732—1

which they are generally understood and accepted commercially, there is a clear distinction between these two descriptions of stone. The former consists of field stone, found everywhere, the rounded ones being usually referred to as cobblestones; they may be of any kind, i.e., granite, limestone, sandstone, etc.; they are of low value—a domestic product—and are always shipped in bulk and used for building and paving purposes. They would be useless as grinding stones. In the light of this controversy it would seem that the word "cobble" might well be eliminated from this item, making it read "field," which would be inclusive and sufficient. The other item is confined to one kind of hard stone (flint); found on the seashore in restricted areas in Europe; are shipped in containers (bags in this case); are used in mills for grinding purposes; are not used for building or paving purposes. "Pebbles" is the recognized trade name for these grinding stones; flint grinding stones may be a more exact description.

In view of the foregoing, we do not consider the fact that these so-called pebbles may be the same size and shape as the stones commonly known as cobblestones, is controlling in the matter here at issue. Flint grinding pebbles imported from Europe (but apparently not those received by applicant) are as small as one inch in diameter, so that within the definitions given by applicant the small grinding pebbles would be outside the category of cobblestones and the larger ones within that description; no such distinction, based on size, is made in the classification item.

The description in the tariff publishing the lower mileage scale of rates is "Stone (Field or Cobble)." The point for determination is whether this is more inclusive than the item of same wording in the classification, thus embracing the stones in both classification items above referred to. The tariff is governed by the classification, from which it might be argued that this description in the tariff is intended to have the same application as the similarly worded item in the classification. This wording in the tariff has had a well accepted meaning and has not heretofore been applied on these grinding pebbles or stones.

We have taken cognizance of the citations given by applicant from previous decisions of the Board, but which are not considered in conflict with our finding here. This Board, as well as the Interstate Commerce Commission, has held that any doubt as to the meaning of a tariff should be construed against the party responsible for having such tariff in effect; that the intention of the framers of the tariff is not controlling and they are to be construed according to the language used, but we also take the same view as the Interstate Commerce Commission, namely, that:—

> "Although doubt as to the meaning of a tariff must be resolved in favour of the shipper and against the carrier which compiled it, the doubt must be a reasonable one and the terms of a tariff must be taken in the sense in which they are generally understood and accepted commercially. All of the pertinent provisions of a tariff must be considered together, and, if those provisions may be said to express the intention of the framers under a fair and reasonable construction, that intention must be given effect." 118 I.C.C., 186; 161 I.C.C., 77.

RULING

Upon consideration of the submissions filed and for the reasons herein set out, the ruling of the Board is that the 10th class rate, plus 4 cents per 100 pounds for Montreal Terminals, was lawfully applicable on the shipment in question.

Ottawa, Ont., May 22, 1933.

ORDER No. 49893

In the matter of the application of the Dome Mines, Limited, of South Porcupine, Ontario, for a ruling of the Board as to the legal rate on a shipment of flint grinding pebbles, which moved from Montreal Wharf, ex Denmark, to South Porcupine, in July, 1932.

File No. 38663

TUESDAY, the 23rd day of May, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*

S. J. MCLEAN, *Assistant Chief Commissioner.*

Upon reading what is filed in support of the application and on behalf of the Canadian National Railways; and upon the report and recommendation of the Assistant Chief Traffic Officer of the Board,—

It is declared: That the 10th class rate, plus 4 cents per 100 pounds for Montreal Terminals, was lawfully applicable on the shipment in question.

C. P. FULLERTON,
Chief Commissioner.

Application of the Saskatchewan Co-Operative Creameries, Ltd., Regina, Sask., for an order of the Board directing a reduction in the freight rates on butter, in carloads, from points in Saskatchewan to Eastern Canadian points, Montreal and west thereof.

File No. 38423.

JUDGMENT

BY THE BOARD.

This application was developed by written submissions of the applicants and the railways and, thereafter, applicants expressing a desire for a public hearing to furnish additional evidence before judgment was given, it was set down for hearing at sittings of the Board in Regina on March 24, 1933, at which Mr. George H. Smith, representing the Province of Saskatchewan, and Mr. Thomas Watson, representing the Saskatchewan Dairy Association, also appeared in support of the application.

At the hearing, Mr. Smith, who presented the case for the applicants, stated it was the intention of the Saskatchewan creameries to confer with the creameries of Manitoba and Alberta and submit a joint memorandum to the Board covering rates on butter from the three Prairie Provinces in the light of the existing conditions.

This application was launched in July, 1932, and the hearing took place over two months ago, so that ample time has been allowed for this purpose. No further submissions have been filed and the matter will now be dealt with on the record.

The Board is asked to direct the railways to establish special commodity rates on butter, carloads, from shipping stations in Saskatchewan to eastern Canadian points, Montreal and west, said commodity rates to be the same as the 4th class rates. The present rates are the 3rd class rates governed by the Canadian Freight Classification. The reduction in rates, as sought, is between 20 and 25 per cent.

This application is very largely based on the condition and needs of the dairy industry of Saskatchewan, i.e., it is stated that it is difficult to operate at a profit under the present prices and reduced rates are required to permit Saskatchewan butter to compete in the markets of Eastern Canada, which are directly adjacent to large dairying districts there. It is pointed out in the submissions of the railways that the price of butter has not fallen to a greater extent than in the case of a great many other commodities, including practically all other farm products. Giving force to this phase of the application would involve a reduction in practically all the freight rates of the country, because, nearly every industry or producer could to-day give similar evidence, as what commodity has not suffered a decrease in value under the economic disturbance of the last four years; and the situation in which the railway companies find themselves as a result of the same condition is well known. This feature of the application involves the fixing of rates based on the needs of an industry; to overcome disadvantages in geographical location; and the establishment of rates bearing a relationship to the fluctuations in the price of commodities. These matters have been fully discussed in recent judgments of the Board, where the same features were raised, and also with respect to the rates on this same commodity between the same points. Mr. Smith stated he was familiar with the previous judgments of the Board, consequently it is considered unnecessary to here repeat what will be found set out in the following references:—

Complaint of the National Dairy Council of Canada *re* freight rates on butter from points in Prairie Provinces to Vancouver and Montreal, Volume 12, Board's Judgments and Orders, p. 144.

Application of Saskatchewan Dairy Association, concerning carload rating on butter in Canadian Freight Classification, Volume 15, Board's Judgments and Orders, p. 199.

Application of the National Dairy Council and Provinces of Manitoba, Saskatchewan and Alberta for a reduction in freight rates on butter, Volume 17, Board's Judgments and Orders, p. 391.

Application of Canadian Sugar Factories, Limited, Raymond, Alta., Volume 22, Board's Judgments and Orders, p. 163 at p. 166-7.

Application of Canadian Freight Association for approval of supplement to Canadian Freight Classification amending the carload rating on bulk apples, Volume 22, Board's Judgments and Orders, p. 220 at p. 225-6-7.

It is suggested by applicants that the reduced rates applied for would benefit the railways through an increase in the tonnage of butter carried. Submissions of this same character are frequently made to the Board, but without being proven. The record is most inconclusive as to what increase in the traffic would actually ensue from the decrease in rates. If the rates were reduced between 20 and 25 per cent, as applied for, then in order for the railways to obtain, not an increase in earnings, but exactly the same gross earnings as they did before the rates were reduced, they would require an increase of between 25 and 33$\frac{1}{3}$ per cent in the volume of the traffic. With this increase in the volume of the traffic handled, the gross earnings of the railways therefrom would be the same as before the reduction was made; but would it be seriously suggested that their net earnings would be the same; or, in other words, that it would cost nothing at all to supply and haul between one-quarter and one-third more cars of this perishable traffic, which requires special equipment and prompt handling. Applicants stated that last year they made 7,666,001 pounds of butter, of which less than 2,000,000 pounds was sold in Saskatchewan, the balance being shipped outside the province, principally to

Eastern Canada. Twenty-five per cent of their make would be 1,916,500 pounds, so that it is not obvious that the increase in tonnage from the applicants under the reduced rates would be sufficient to be of actual benefit to the railways in the way of increased earnings from this traffic.

The production of creamery butter in Saskatchewan, as well as the two other Prairie Provinces, in the year 1931, is the largest ever recorded. Figures for 1932 are not available and it is stated that, so far as Saskatchewan is concerned, they would show a decrease of approximately 1,000,000 pounds. Without showing each year's figures (some of those omitted being shown in previous judgments above referred to) the following is taken from the record of the Bureau of Statistics:—

Year	Manitoba Pounds	Saskatchewan Pounds	Alberta Pounds
1900	1,557,010	143,645	601,489
1910	2,050,487	1,548,696	2,149,121
1915	5,839,667	3,811,014	7,544,148
1920	7,578,549	6,638,656	11,821,291
1925	13,663,312	15,946,233	19,630,101
1930	15,786,896	13,920,561	17,716,744
1931	21,078,073	18,960,352	22,957,922

Mr. Smith contended that the ton mile rate under the rates applied for indicated they would be remunerative when contrasted with the average rate per ton mile on the entire traffic carried by the railways. Some figures were given, but a comparison of this character furnishes no evidence of the unreasonableness of the butter rates under consideration. It has repeatedly been held by the Board, as well as the Interstate Commerce Commission, that ton mile earnings alone are seldom a proper test of the unreasonableness of a rate; further that the fact that rates on a certain commodity yield revenue per ton mile higher than the average on all traffic, cannot be accepted as evidence of the unreasonableness of such rates. If it were so accepted, the result would be a continual reduction of rates that yield higher than the average revenue until all rates were on a common level. Ton mile statistics, reflecting, as they do, neither carloading, train tonnage, nor car nor train mileage, are far from being reliable guides in fixing freight rates. Without any change in the charge for the service, a reduction, or an increase, in the average revenue per ton mile will be brought about by a relative difference in the length of haul or in the volume of traffic taking different rates.

Mr. Smith directed attention to commodity rates on butter, carloads, from points in North Dakota to Montreal and New York, which are below the third class rate. To Montreal the following comparison is given:—

From	To	Third Class Rate	Commodity Rate	Reduction
Minot, N.D.	Montreal,	$2 40½	$2 04½	36 cents
Dickinson, N.D.	Montreal,	2 49½	2 10½	39 cents

He stated that the Canadian Pacific and Canadian National Railways were participating carriers in these special commodity rates and that (p. 519):—

> "These special commodity rates on American butter from North Dakota creameries to Montreal were established with the full approval and concurrence of both the Canadian Pacific and Canadian National Railways. The Saskatchewan Government therefore strongly urges that our Canadian railways should, in justice to our suffering Canadian producers and Canadian creameries, be directed to established fair and equitable commodity rates on Canadian butter from Saskatchewan to the same markets as they have been instrumental in establishing commodity rates on American butter from North Dakota creameries."

These rates have been checked. There are no through rates published on butter from North Dakota to Eastern Canada. The rates named are simply combinations of commodity rates from originating points to Chicago, plus the 3rd class rates from Chicago to Montreal, the latter being published in Central Freight Association (Jones) Tariff C.R.C. No. 843. The rates are made up as follows:—

Minot to Chicago (Special Commodity Rate)	$1 08
Chicago to Montreal (3rd Class Rate)	94½
United States Lines' Emergency Charge	02
	$2 04½

Dickinson to Chicago (Special Commodity Rate)	$1 14
Chicago to Montreal (3rd Class Rate)	94½
United States Lines' Emergency Charge	02
	$2 10½

The tariff publishing the rates from points in North Dakota to Chicago is not filed with the Board. We have obtained a copy of Great Northern Railway Tariff I.C.C. No. A-7148, containing the rate of $1.08 from Minot to Chicago, and which shows on its title page that the rates published therein were established to meet motor truck competition and expire December 31, 1933, unless sooner cancelled, changed, or extended. It cannot, therefore, be properly stated that the Canadian lines have been instrumental in establishing commodity rates on American butter from North Dakota creameries to Montreal; they are not responsible for the commodity rates to Chicago and, in so far as they can control the situation east of Chicago, the rate is 3rd class the same as in the Canadian Classification. There is no evidence that any butter is moving on these rates from North Dakota points to Montreal. Mr. Smith was asked this question and replied, "I don't know."

Applicants made reference in a general way to the handling of meat and eggs as compared with butter. In the railways' submission dated January 21, 1933, this feature was gone into in considerable detail and, as copy was furnished the applicants, it is unnecessary to here set out the data contained therein. Briefly, it shows a marked difference in the consumption per capita, butter being the lowest; that the average value of a carload of butter greatly exceeds that of eggs or meats. It is stated by the railways, and admitted by applicants, that fresh meats and eggs are not, as products, competitive with butter, as in no case can one be used as a substitute for the other.

The matter of the rates on butter has been before the Board on three occasions in the past ten years and they have been found not to be unreasonable. We do not consider the present record affords any basis for finding the present rates unreasonable and the application will be refused.

Ottawa, Ont., May 26, 1933.

ORDER No. 49912

In the matter of the application of the Saskatchewan Co-operative Creameries, Limited, of Regina, Saskatchewan, hereinafter called the "Applicants," for an Order directing a reduction in the freight rates on butter, in carloads, from points in Saskatchewan to Eastern Canadian points, Montreal, and west.

File No. 38423

TUESDAY, the 30th day of May, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*

G. A. STONE, *Commissioner.*

Upon hearing the application at the sittings of the Board held in Regina, March 24, 1933, in the presence of representatives of the applicants, the Canadian Pacific Railway Company, and the Canadian National Railways, and what was alleged,—

It is ordered: That the application be, and it is hereby, refused.

C. P. FULLERTON,
Chief Commissioner.

Application of the Hamilton Street Railway Company, dated April 3, 1933, to review and vary the judgment of the Board delivered at the hearing on January 30, 1933, and Order No. 49488, dated February 1, 1933, based thereon.

(File No. 23009.1)

JUDGMENT

FULLERTON, CHIEF COMMISSIONER:

By a judgment bearing date January 30, 1933, the Board disposed of the application of the several utility companies to be reimbursed for expenses incurred by them in the alteration of their facilities to meet the changed conditions brought about by the erection of the Canadian National Railway Company's station at Hamilton and the facilities in connection therewith.

The Hamilton Street Railway Company now applies to vary the said judgment in so far as it affects that company by directing that it "be reimbursed for the residual value of its tracks and equipment on the old (James Street) bridge and the cost of removal thereof and, in addition, the residual value of its tracks and equipment which were abandoned as a result of the widening of the railway 'cut' or in any event should be reimbursed to the extent that such cost was increased by the lengthening of the bridge as a result of the widening of the said 'cut'."

With regard to the first part of the relief asked for, the Board has already refused it and I see no reason for departing from the former judgment.

As to the claim for the residual value of its tracks and equipment which had to be taken up and replaced as a result of the widening of the railway "cut," the applicant is entitled to succeed. The failure to allow this in the former judgment was due solely to the fact that it was overlooked when the former

judgment was written. In addition the applicant presents a claim which in no way involves a variation of the former judgment but is really a new substantive claim. This claim reads:—

> "In regard to the disallowance of the applicant's claim to recover the cost of the special works constructed at the corner of Barton street and Birch avenue, the applicant asks leave to substitute for this item a claim for the residual value and cost of removal of its tracks and equipment on Stuart street which had to be abandoned as a result of the reconstruction and lengthening of the said new bridge, and submits that the said Order No. 49488 be amended and varied accordingly."

The Canadian National Railways agreed that the claim should be dealt with in the present proceeding.

On the former hearing it appeared from the evidence that the applicant had a line of railway running north and south along James street with a branch running west on Stuart street to the old station of the Canadian National Railways. When the portion of Stuart street between James street and McNab, the first street to the west, was removed by the excavation for the new station and its facilities temporary connection was made with the line at McNab street by carrying a line from a point on James street, south of the old connection, across private property of the Canadian National Railways.

On the former hearing the applicant was allowed for the loss of its line on Stuart street between James and McNab streets and for the temporary connection, but no claim was made for any loss in connection with the line along Stuart street from McNab street to the old Canadian National Railways' station, a distance of about 1,800 feet, which was in no way interfered with by the excavation of the Canadian National Railways.

In his evidence on the former hearing, Mr. Waller, the manager of the applicant, referring to the portion of the line here in question, said:—

> "We have not charged for the taking up of any track, which would be about $5,000 yet. That is not included in the bill."

However, having failed on the former hearing in its claim for the cost of certain special works constructed at the corner of Barton street and Birch avenue, the applicant now asks "to substitute for this item a claim for residual value and cost of removal of its tracks and equipment on Stuart street."

It is evident from the above statement of the facts that the applicant at the time the former application was heard had no intention of making any such claim as it now puts forward and for the very obvious reason that it was well aware that it had suffered no damages. At the time of the previous hearing the track had not been torn up, nor has this yet been done. The applicant was, consequently, in as good a position at that time to make its present claim as it now is.

In the notes of the former hearing at page 95 Mr. Waller was asked:—

> Q. What was the purpose of that line?—A. To serve the old Canadian National Railway station and some industries at the end of the line.
>
> Q. Was that the purpose of the tracks from James street along Stuart in a westerly direction, was it?—A. Yes.
>
> Q. To serve the Canadian National station as it existed prior to reconstruction?—A. Right.
>
> Q. Why would you desire to continue to operate along Stuart street, had it anything to do with the new station?—A. Yes to take care of the traffic originating at the old station.
>
> Q. And as soon as the new station was in existence what happened to the temporary track which had been placed on Canadian National Railway right of way?—A. *It was taken up.*

In the answer to the last question you have the complete answer to this application.

When the old station of the Canadian National Railways was abandoned and the new station opened the applicant's track from James street west to the old station became valueless and was abandoned. Mr. Waller said that in giving a five minute service from James street to the old Canadian National Railways' station the applicant operated about 200 car miles per day at a cost of 26 to 27 cents per car mile. It thus appears that the applicant has been benefited to the tune of over fifty dollars a day by the removal of the station to its present site and the abandonment of the line on Stuart street.

The only claim for damages against the Canadian National Railways that the applicant ever had was for the destruction of its track and right of way from James street to McNab street and the expense of providing a connection to take their place. This was done and under the judgment on the previous hearing the applicant is entitled to payment in full for all expenses involved in the change. Had the applicant continued to operate this track the only additional claim it possibly could have against the Canadian National Railways would be the expense that it might be put to in procuring the new right of way from James street to McNab street. This it does not require as the road has been abandoned.

The application will be dismissed.

May 27, 1933.

Commissioner Norris concurred.

ORDER No. 49935

In the matter of the application of the Hamilton Street Railway Company for leave to substitute for its claim to recover the cost of the special works constructed at the corner of Barton street and Birch avenue, a claim for the residual value, and cost of removal, of its tracks and equipment on Stuart street which had to be abandoned as the result of the reconstruction and lengthening of the bridge on James street, Hamilton.

File No. 23009.1

Friday, the 2nd day of June, A.D. 1933.

Hon. C. P. Fullerton, K.C., *Chief Commissioner.*

Hon. T. C. Norris, *Commissioner.*

Upon hearing the application at the sittings of the Board held at Hamilton, May 25, 1933, in the presence of Counsel for the Hamilton Street Railway Company, the City of Hamilton, and the Canadian National Railway Company, and what was alleged—

It is Ordered: that the application be, and it is hereby, dismissed.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 49936

In the matter of the Order of the Board No. 49488, dated February 1, 1933, directing inter alia, that the Hamilton Street Railway Company be reimbursed by the Canadian National Railway Company and the City of Hamilton for expenses incurred by the said Hamilton Street Railway Company in connection with the alteration of its facilities in the City of Hamilton;

And in the matter of the application of the Hamilton Street Railway Company for an Order reviewing or varying the said Order No. 49488 by providing that the company be reimbursed for the residual value of its tracks and equipment on the old bridge on James Street and the cost of the removal thereof; and also for the residual value of its tracks and equipment which were abandoned as a result of the widening of the railway "cut," necessitated by the construction of certain works which the Canadian National Railway Company was authorized to do under Order No. 40949, dated June 19, 1928; and for interest on sums which the said Hamilton Street Railway Company is entitled to recover.

File No. 23009.1

TUESDAY, the 6th day of June, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*

Hon. T. C. NORRIS, *Commissioner.*

Upon hearing the application at the sittings of the Board held at Hamilton, May 25, 1933, in the presence of Counsel for the Hamilton Street Railway Company, the City of Hamilton, and the Canadian National Railway Company, and what was alleged—

It is Ordered:

1. That the application for reimbursement for residual value of the tracks and equipment on the old bridge on James street, and for the removal thereof, be dismissed.

2. That reimbursement for the residual value of the tracks and equipment on James street which were abandoned as the result of the widening of the "cut" in making provision for additional facilities, and for the cost of removal, be allowed.

3. That interest, at the rate of five per cent per annum, be allowed on such amounts as the Hamilton Street Railway Company is entitled to recover under this Order and Order No. 49488, dated February 1, 1933, from the date of expenditure to the date of payment.

4. That when the amount due the Hamilton Street Railway Company is ascertained it shall be recoverable from both the City of Hamilton and the Canadian National Railway Company. If the City and the Railway Company cannot agree on the apportionment as between themselves, either of them may apply to the Board.

C. P. FULLERTON,
Chief Commissioner.

Application of the Dominion Traffic Association, Toronto, Ont., for a declaration of the Board as to the legal rate on an import shipment of wine carried by the Canadian National Railways from Saint John, N.B., to Toronto, Ont., in April, 1930.

File No. 35948.2

JUDGMENT

By the Board:

Applicant asks for a declaration by the Board as to the rate legally applicable on a less than carload shipment of three hogsheads of imported wine shipped from Saint John, N.B., on April 10, 1930, over the Canadian National Railways consigned to Toronto. The rate charged was $2.06 per 100 pounds, or double first class; applicant claims the charge should have been at first class rate of $1.03 per 100 pounds.

The point in issue involves an interpretation of Canadian National Railways Tariff C.R.C. No. E-781 and supplements thereto as in effect on April 10, 1933, publishing rates on import merchandise from Saint John and other ports to stations in Eastern Canada. The tariff is governed, except as otherwise provided therein, by the Official Classification. Wine, in bulk in hogsheads, in the Official Classification is rated first class L.C.L. The tariff is in three sections. Section 1 contains import class rates; sections 2 and 3 are headed "Import Commodity Rates."

In section 2 there is a provision reading: "If the rates in section 1 or 3 of this tariff make a lower charge on any shipment than the rates in section 2 of this tariff, the rates in section 1 or 3 will be applied." This section then contains a long list of commodities and, opposite such commodities, three columns headed respectively "Rates to apply"; "Subject to maximum rate, in cents per 100 pounds, named below to points of destination shown opposite shipping points indicated by symbol on pages 19 to 92"; "For specific rates see pages 95 to 100." Among the commodities listed is an item reading: "Liquors, L.C.L., except ale and beer." Nothing appears opposite this item in the first two columns above named; in the third column, reference is made to Item 95, which is to be found in section 3, and which provides on Liquors, L.C.L., double first class rate. Section 3 does not contain the above quoted provision as to alternative use of class or commodity rates.

The position taken by the railway is set out as follows:—

> "The tariff covering the shipments referred to is C.N.R. I-25, C.R.C. No. E-781, which is governed, except as otherwise provided in the tariff, by Official Classification No. 47, C.R.C. OC-47, supplements thereto, and reissues thereof, the effective issue at time of movement, April 10, 1930, being Official Classification No. 49, C.R.C. O.C.-49. This Classification provided for a rating of 1st class on wine, L.C.L., in bulk in barrels, as shown on page 481, Item No. 9, but, as pointed out above, the tariff is governed, *except as otherwise provided in the tariff,* by the Classification.
>
> "Item 95 and its reissue, Item 95-A, published in Supplement 26 to C.N.R. Tariff I-25, C.R.C. No. E-781, was an exception to the Classification in the respect that it provided for double 1st class on liquors, L.C.L., except ale and beer. Section 3 in which this Item 95-A appears makes no provision for the alternative application of rates published in sections 1 and 2 of the tariff, which is an additional reason for our contention that double 1st class was properly applicable.
>
> "The items in section 3 are special individual commodity rates, which are fixed without relation to sections 1 and 2 of the tariff and are not governed thereby."

The contention of applicant is that in view of the quoted provision in section 2 and that liquors are listed therein, sections 2 and 3 require to be considered as one section.

The point for determination is whether the inclusion of this liquor item in section 2, even though it makes reference to an item in section 3, has the effect of providing rates on liquors within the provisions of section 2 as well as in section 3 and section 1. We are of the opinion that it does. In the majority of cases, with respect to the items listed in section 2, the actual rates are not there shown, but merely a statement that 4th, 5th, 6th, etc., class rates apply and it is necessary to refer to section 1 to find the applicable rate in such cases. In the same way, for other commodities listed, it is necessary to refer to section 3 to find the rates applicable. In the case of liquor, section 2 refers the reader to section 3 and, when that section is reached, it states in Item 95-A that the rates are double first class, which then necessitates turning to section 1 of the tariff to find the specific rate to a given destination.

We consider that when, in section 2, which is headed "Import Commodity Rates," a commodity is listed, it is brought fully within the provisions of said section; that because it may be necessary to refer to section 1 or section 3 to ascertain the specific rates, this is merely to avoid the enlargement of the tariff that would be necessary to show all the individual rates applicable within section 2 so as to make it complete in itself. In other words, when on alum, for example, it states 6th class rates apply, this has the effect of making all the 6th class rates a part of section 2, just as much as though they had been inserted therein. Similarly, when, on liquors, it refers to Item 95 on page 96, this has the same effect as reading and incorporating these rates into section 2. This is not an unusual method employed in tariff construction.

This is our interpretation of the tariff, but, aside from this, if the manner of construction of section 2 was not intended to have the effect of bringing the rates on all the commodities therein listed within its provisions, then it would be clearly our opinion that this section was crudely drawn and sufficiently ambiguous in its wording and construction to create much doubt as to its proper meaning and interpretation, in which case, following precedent, we would hold that in the case of ambiguity, tariff provisions are to be construed in favour of the shipper and against the party responsible for having in effect a tariff so constructed as to leave room for much doubt as to its meaning.

While the interpretation of the tariff here under consideration requires to be based on its own provisions and not what may be found in some other tariff, it does not seem altogether out of place to refer to the situation which would be created by giving effect to the position taken by the Canadian National Railways concerning the interpretation of this tariff which it publishes containing rates on import merchandise from Saint John and other ports to stations on its line in Eastern Canada. The Canadian Pacific Railway publish a similar tariff of rates on import merchandise to its stations in Eastern Canada (C.R.C. No. E-4271). This tariff has only two sections, section 1 containing import class rates and section 2 import commodity rates. These liquors are listed in section 2 as taking double first class rates L.C.L., but this section contains a provision reading: "If the rates in section 1 of this tariff make a lower charge on any shipment than the rates in section 2 of this tariff, the rates in section 1 will be applied." Under the clear reading of this tariff as at the date the shipment here in question moved, the import rate on a L.C.L. shipment of liquor in hogsheads carried by the Canadian Pacific Railway from Saint John to Toronto was $1.03 per 100 pounds, while the Canadian National Railways contend their rate on a similar shipment between the same points on the same date was $2.06 per 100 pounds. This would be an absurd and indefensible rate situation, having also in

mind that the companies confer together and maintain a parity of rates on this import traffic. There is absolutely no question concerning the application of the first class rate, rather than double first, under the reading of the Canadian Pacific Railway tariff at this date, and the Board has record of shipments being so charged.

Upon consideration of the submissions filed, and for the reasons herein set out, the Board declares that Canadian National Railways Tariff C.R.C. No. E-781 must be construed to make applicable a rate of $1.03 per 100 pounds on the shipment in question.

OTTAWA, ONT., June 5, 1933.

ORDER No. 49937

In the matter of the application of the Dominion Traffic Association, of Toronto, Ontario, for a declaration of the Board as to the legal rate on an import shipment of wine carried by the Canadian National Railways from Saint John, New Brunswick, to Toronto, Ontario, in April, 1930.

File No. 35948.2

WEDNESDAY, the 7th day of June, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

Upon reading the submissions filed on behalf of the Applicant and the Railway Company—

It is Declared that the Canadian National Railways' Tariff C.R.C. No. E-781 must be construed to make applicable a rate of $1.03 per 100 pounds on the shipment in question.

C. P. FULLERTON,
Chief Commissioner.

Application of The Ottawa Electric Railway Company for approval of Standard Passenger Tariff C.R.C. No. 16 and Special Passenger Tariff C.R.C. No. 17 amending or supplementing the tariffs now in force within the City of Ottawa by providing for a ten-cent fare instead of a seven-cent cash fare, by eliminating the four for twenty-five cents tickets and seventeen for one dollar tickets, and by providing for a five-cent fare for a person fifty-one inches in height or under, effective August 13, 1933.

(File No. 6949·2)

JUDGMENT

FULLERTON, *Chief Commissioner.*

Under the authority of an agreement entered into on the 25th January, 1924, between the City of Ottawa and The Ottawa Electric Railway Company, the latter on the 16th September, 1932, filed with the Board a tariff of fares to become

effective August 13, 1933, and applied to the Board for authority to charge such fares during the period of five years following said last mentioned date.

The matter came on for hearing before the Board on the 18th, 19th and 22nd days of October last when some 960 folios of evidence were taken and 37 exhibits filed. Later, a short hearing was held on the 19th of May, 1933.

Since the hearing the interested parties have been negotiating for a settlement and it was only on the 4th day of April, 1933, that we were notified that negotiations had failed.

In order to make this application intelligible it will be necessary to give a short history of the company prior to the making of the agreement above referred to in 1924.

By chapter 106 of the Statutes of Canada, 1866, a company was incorporated under the name of the Ottawa City Passenger Railway Company for the purpose of constructing and operating street railways in the city of Ottawa and adjoining municipalities.

In 1891 a company known as The Ottawa Electric Street Railway Company obtained permission from the city of Ottawa to operate a line of street railway by electricity in certain streets of the said city.

By agreement dated June 28th, 1893, between the city of Ottawa and the two above-named companies, the two companies agreed to unite and amalgamate their business property, franchises and assets, and the city confirmed the authority of the two companies to construct, maintain and operate lines of street railway upon and along the streets of Ottawa for a period of thirty years to be computed from the 13th day of August, 1893. The agreement provides that the city of Ottawa may, after giving at least six months' notice prior to the expiration of the said period of thirty years, assume the ownership of so much of the said railway as was situate in the province of Ontario on payment of the value thereof. In the event of the city not exercising its right at the end of thirty years, it may exercise such right at the expiration of any fifth year thereafter.

By agreement dated the 26th March, 1894, between the Ottawa City Passenger Company and The Ottawa Electric Street Railway Company the former took over from the latter all its undertaking, franchises and privileges.

By chapter 86 of 57-58 Victoria (Dom.) the agreement was confirmed, the name of the Ottawa City Passenger Railway Company changed to The Ottawa Electric Railway Company, its lines of street railway declared to be works for the general advantage of Canada and the company itself declared to be a body corporate subject to the legislative authority of the Parliament of Canada.

At the expiration of the thirty-year period referred to in the agreement of the 28th of June, 1893, the city did not take over the said railway, but on the 25th of January, 1924, entered into an agreement with The Ottawa Electric Railway Company, which was confirmed by chapter 84 of 14-15 Geo. V (Dom.), under which the company has since continued to operate the portion of the said railway described in clause 4 (*c*) of the agreement as follows:—

" (1) the company's transportation system now or hereafter constructed or operated within the present limits of the city;

" (2) that part of the company's lines outside the limits of the city that runs to Cloverdale avenue in Rockliffe Park, and

" (3) upon such lines as are now or as may hereafter be constructed into the Central Experimental Farm; and

" (4) the present lines of the company in the province of Quebec and as far as, but not including, Main street in the city of Hull.

The agreement does not include the Britannia line from the city limits to Britannia Park and certain bus lines. By this agreement the fares were fixed and it was provided that such fares should not be altered until the 13th day of August, 1928.

By section 9 of the agreement one year before the end of any five-year period, the company may apply to the Board for an increase, or the city may apply for a decrease in the fares.

In December 1927, pursuant to said section 9 the company filed with the Board a tariff of increased fares. The application for confirmation of the tariff was heard by the Board at considerable length and judgment given on the 23rd of June, 1928, granting an increase in the fares.

The judgment of the Board is reported in 34 C.R.C., p. 316.

In considering the present application, it is necessary to pay particular attention to the provisions of section 9 (*a*) of the agreement which lays down the principles upon which the Board must act in fixing tariffs of fares. Section 9 (*a*) reads as follows:—

> "Should the company consider that the revenue to be derived from the operation of the part of its transportation system within the city limits, as they may be from time to time, and from the other lines mentioned in sub-clause (*c*) of clause 4 hereof (hereinafter in this clause called 'the said part') will be insufficient to provide during the five-year period next succeeding the five-year period then current, for the following items, viz., the cost of operating the said part and such portion of the cost of operating works in connection with the company's transportation system as is properly chargeable to the said part, and of maintaining and keeping up the same in an efficient condition, and of making proper provision for their depreciation, renewal and replacement, and for a just and reasonable return to the company on the capital investment in the said part and on such portion of the capital investment in the said works as is properly chargeable to the said part, as such capital investments may be from time to time, the company may notify the city in writing not later than one year before the end of any five-year period, that it cannot profitably continue, after such period, the tariff of fares then in effect on the said part, and shall submit therewith a tariff of fares, and the tariff of fares to be effective during the next five-year period shall thereupon be open for discussion between the parties hereto."

This section by implication authorizes the Board to fix such a tariff of fares as will produce a sum sufficient to provide:—

1. Operating costs;
2. Maintenance;
3. Making proper provision for depreciation, renewal and replacement;
4. Making a proper provision for a just and reasonable return to the company on the capital investment as such capital investment may be from time to time.

The accounts of the company relating to the part of its system within the contract and the part outside the contract were kept together, but the items relating to the part within the contract have been segregated by the company for the purposes of this application.

The company filed as exhibits 8 and 38 statements of revenue and expenses for the years 1928 to 1932, which show in round figures the following:—

TOTAL REVENUE

1928	1929	1930	1931	1932
$1,769,000.00	$1,823,000.00	$1,704,000.00	$1,587,000.00	$1,419,000.00

OPERATING EXPENSES

1928	1929	1930	1931	1932
$1,235,000.00	$1,205,000.00	$1,177,000.00	$1,067,000.00	$ 967,812.00

DEPRECIATION

1928	1929	1930	1931	1932
$ 219,000.00	$ 236,000.00	$ 249,000.00	$ 251,000.00	$ 249,767.00

DOMINION INCOME TAX

1928	1929	1930	1931	1932
$ 6,703.00	$ 13,405.00	$ 8,863.00	$ 17,549.00	$ 7,312.00

Deducting operating expenses, depreciation and Dominion Income Tax as above from the total revenue, there remains for return upon capital the following:—

1928	1929	1930	1931	1932
$ 308,000.00	$ 369,000.00	$ 269,000.00	$ 251,000.00	$ 194,264.00

Exhibit No. 38 gives the revenue for the first four months of 1933 as $474,-622.04 and the operating expenses as $412,222.19. Contrasted with this are the revenues and operating expenses for the first four months of 1928-1932 as follows:—

REVENUE

1928	1929	1930	1931	1932
$ 661,653.00	$ 706,587.00	$ 654,790.00	$ 608,791.00	$ 572,000.00

OPERATING EXPENSES

1928	1929	1930	1931	1932
$ 535,848.00	$ 527,272.00	$ 519,458.00	$ 487,241.00	$ 446,061.00

Now in the 1928 decision of the Board the following findings were made:—

1. The capital investment of the company at December 31, 1927, upon which the return to the company was to be calculated was $6,152,725.36.

2. The depreciation ratio was fixed at 4·11 per cent.

3. A just and reasonable return to the company on capital investment was fixed at 7 per cent plus 2 per cent by way of surplus.

When the question of fixing the amount of the capital investment was being considered, Mr. Tilley, who appeared for the city on the previous hearing, raised the point that the amount to the credit of the depreciation account should be deducted from the cost of the plant in order to arrive at the true amount of capital investment.

On December 31, 1927, the amount to the credit of Depreciation Reserve stood at $1,400,000 and the capital cost was $6,152,725.36.

The Board declined to give effect to Mr. Tilley's contention and fixed the last named amount as the capital investment.

The first important matter then to determine is the meaning of the words "capital investment" as used in the contract. It is upon the "capital investment" that the company is entitled to a just and reasonable return.

The company claims that "capital investment" is synonymous with "capital cost."

Starting with the figures $6,152,725.36, the alleged capital investment of the company on the 31st of December, 1927, as found by the Board on the previous hearing, it adds the capital additions for the years 1928-1931 together amounting to $226,957.45, making a total of $6,379,682.81, which it claims to be the capital investment upon which it is entitled to a reasonable return.

The Board on the former hearing, in effect, held that "capital investment" as used in the contract means "capital cost," and that depreciation has no bearing on the question. I am unable to accept this decision and feel compelled to express by own view of the matter.

Let us consider for a moment the object and purpose of requiring a depreciation account.

In Vol. 177, I.C.C. Rep. at p. 422, I find the following definition of depreciation:—

> "Depreciation is the loss in service value not restored by current maintenance and incurred in connection with the consumption or prospective retirement of property in the course of service from causes against which the carrier is not protected by insurance, which are known to be in current operation and whose effect can be forecast with a reasonable approach to accuracy."

In the same report at p. 411 it is said that:—

> "The reservation from income for depreciation is equivalent each year to a partial return of principal, and with each such return the amount to be earned the next year as a fair return upon the principal diminishes proportionately."

Again at p. 407 we find the following:—

> "It is not the new property which has been supplied through depreciation charges upon which we believe the company should have no return. It is rather the old property, or service capacity, which has been used up and which the new property has replaced."

The purpose then of permitting depreciation is to compensate for property consumed in service. The company forecasts as best it can the loss of plant units by physical decay and provides in advance a fund known as the depreciation reserve. This must necessarily represent what percentage, in the judgment of the company, of the several units service life has in fact been consumed.

On the previous hearing Mr. Nash, a witness for the company, stated (Vol. 530, p. 2169) that the common practice fifteen years ago was to write off depreciation on each item each year and the book value of the items was thus decreased by the amount so written off. This was the practive followed in the early days of this company. Later on the company adopted the method of setting up a reserve.

Asked what was the advantage of the later system he replied:—

> "It shows the amount provided for depreciation and I think perhaps even more to show the cost of your asset. In many cases the cost is desired and it is easier to get at it if you do not disturb it by deducting something from it."

The company keeps what it calls a plant ledger in which it enters from time to time what it considers the proper depreciation in connection with each unit. In this connection Mr. Burpee stated:—

> "In arriving at the depreciation, each item is considered. We have what we call our plant ledger in which every asset has a page and the history of it and the depreciation set up to date, and from year to year the depreciation is dealt with on that sheet and the amounts set up for depreciation reserve after consideration of each asset as to its physical condition at the time."

Exhibit No. 7 is the Investment statement of the company for the years 1928-1931. Mr. Burpee stated in his evidence that these figures "show the cost only not an appraisal or any other system of arriving at the value." The total cost to the end of December, 1931, is shown as $6,379,682.81.

Exhibit No. 17, however, shows that the company has a depreciation reserve of $2,671,659.39 for its whole system. The depreciation reserve for the inside lines is $2,438,756.17. This is the amount which the company set aside out of

revenue received by it to represent the use that has already been taken out of the property. It represents the useful life of the property that is gone. Under the old system of taking off depreciation from the several units each year no question could be raised because the capital investment account would then show the total amount paid for the property less the amount written off for depreciation, and would be equivalent in the present case to the difference between the total capital cost less depreciation.

Let me note again that the contract calls for a return upon the "capital investment" and not upon the "capital cost" nor upon "capital invested." The company has invested over six millions in the property but it has received back over two millions and, consequently, its investment can only be the difference between the two.

The point may be illustrated thus:—

A company invests $6,000,000 in a plant. It is entitled to a return on its capital investment and a provision for replacement. Suppose five years after the company had started in business it had a fire which destroyed say $2,000,000 worth of plant and next day the question arose as to the amount of the company's capital investment, no one could successfully contend that it was $6,000,000.

I find it impossible to distinguish between reduction in capital investment caused by fire destroying a portion of the plant and reduction caused by wear and tear resulting in deterioration extending generally over the whole plant.

The matter may be looked at in another way. Under the strict interpretation of the contract the money set apart for depreciation should be used only for the purpose for which it is intended. It is really held by the company in trust to be used only to restore property worn out, or impaired so as continously to maintain it as nearly as practicable at the same line of efficiency.

The witnesses for the company say that in calculating the yearly amount required for depreciation the company has adopted what is known as the straight line method of depreciation under which the annual depreciation charge is obtained by dividing the cost by the number of years of estimated service life. Thus, with a cost of $1,000 and a service life of ten years, the annual depreciation charge is $100.

In addition to the straight line there is the sinking fund method under which the aggregate of the charges of the several years is less than the net plant cost for the whole period because the proceeds of each year's charges are deemed to have been continuously invested at compound interest and the balance is assumed to be obtained from interest accumulations.

There are also other recognized methods referred to in the reports. These are all cases in which rates were being fixed without regard to contract.

In the present case we have a contract which definitely settles the principles to be observed in arriving at the rate.

The fare in the present case is to be sufficient during the five-year period to provide for, among other things:—

Making proper provision for depreciation, renewal and replacement.

The question under this provision simply is which amount must annually be set aside for the purposes mentioned. The company is entitled to demand that amount and no more.

My own view is that as the depreciation reserve in the present case is provided for a specific purpose it should be used exclusively for that purpose, and that under a strict interpretation of the contract the fund should not be appropriated by the company to some other purpose, for example, the purchase of additional plant as has been done in this case—at least not during the five year period.

To comply with the contract the company should, in my opinion, follow in principle the sinking fund method and from time to time invest the money and give the city the benefit of interest accruals. Under this method the city would receive the benefit of interest accumulations whereas under the company's method not only does the city lose this interest, but is asked to pay a return on the amount appropriated from the depreciation reserve for additional plant.

For the reasons which I have given, I am forced to the conclusion that in determining the rate base so much of the depreciation reserve as has not been used for retirements or replacements should be subtracted from the capital cost of the company's property.

Now, coming to the second finding of the Board in the 1928 judgment that a depreciation ratio of 4·11 is justifiable. Until 1917 no depreciation reserve account was kept but the company followed the old practice of deducting what they considered a reasonable amount from the capital account.

Between 1917 and December 31, 1931, $3,070,000 was set aside for depreciation reserve. During that period only $398,000 was charged to the depreciation account, so that there was at the end of 1931, according to exhibit No. 17, the sum of $2,671,000 to the credit of the depreciation reserve. This amount, as I have pointed out above, is for the whole system. The depreciation reserve for the inside lines is $2,438,756.17.

Now the capital expenditure up to December 31, 1931, according to exhibit No. 7 was $6,379,682.81. From this amount must be deducted $651,077.26 for property not subject to depreciation as shown on exhibit No. 25.

It follows that the company has depreciable property which originally cost $5,728,605.55, for which it has provided a depreciation reserve of $2,438,756, or about $42\frac{6}{10}$ per cent.

Mr. Burpee, the manager of the company, questioned on the subject of depreciation, said:—

> "Q. During the period between 1924 and 1928 how was the amount of your depreciation fixed?—A. The depreciation at that time was set aside by the directors at a flat amount, a round figure of $120,000, I think.
>
> "Q. I asked how it was arrived at?—A. It was arrived at by the directors setting aside a fixed amount.
>
> "Q. Did they do that without any advice from the general manager?—A. There had never been a serious consideration given to depreciation.
>
> "Q. Were you general manager at the time?—A. I was manager.
>
> "Q. Did the directors fix it without consultation with the manager?—A. Yes.
>
> "Q. So that you have no knowledge of how it was done?—A. No.
>
> "Q. Did they not consult you before they did it?—A. No.

The city called Mr. A. S. Richey as a witness. He is an electrical engineer of wide experience practicing chiefly in connection with electric street railways. Mr. Richey has the following to say on the subject of depreciation:—

> *Pp. 2790-2792:* "What I want to point out is that the present balance in the depreciation reserve is 41·9 per cent of the total property investment, and with relation to the depreciable property the present balance in the depreciation reserve is 46·9 per cent; in other words, considering that last statement, there is a balance at present in the depreciation reserve almost sufficient to replace to-morrow almost one-half of the total depreciable property of the company.
>
> "What I am leading up to, if you want me to draw any conclusion is that I propose that the present annual allowance for depreciation is much larger than is required, and I believe it is shown by these figures

that it has accumulated now to the point where it is almost sufficient to replace one-half the entire depreciable property. An allowance of one-quarter of that amount has been criticised severely as being too great, and inasmuch as the proper replacements have been made I do not believe any man conversant with street railway operation in the United States or Canada would come into Ottawa and say that the property was not up to 100 per cent operating condition. Replacements have been made, and the property is in good condition, much better condition than perhaps the average property in any city of the same size in the United States.

"The depreciation reserve, having functioned to that extent, which is on a seasoned property, not a new property—having functioned to the extent that it has kept the property up in the condition it is in now, good condition, and in addition to that having increased itself so that it now stands at 47 per cent of the total value of the depreciable property is in itself I think the very best argument, the very best reason, for saying that the depreciation allowance has been too great.

"Now, one other thing will illustrate that Major Burpee's exhibit No. 13, in which it looks as though he has put together all of the capital expenditures that he could think of to be made in the next five years—in fact I think in his testimony he said that was assuming good conditions—if you will add up the retirals which are included in that, the retirals added up there, you will notice on page 4 with regard to straight track there is $258,000, and on page 7 in connection with special work there is $85,000 and in connection with cars there is $280,000 and so on. If you take those figures you will find that he has assumed for the next five years, even doing all this—one-half of which I do not think is necessary—but even taking all this he is only withdrawing $750,000, and if he does not add anything in the next five years it would still stand at nearly $2,000,000; so that looking at it from these angles, and especially comparing it with 3·89 last year's allowance and 4·11 which has been mentioned as what this Commission approved of four years ago, and the 4·41 shown on exhibit No. 24, and comparing that with the allowances made by companies and commissions in the United States, I believe that that allowance is very excessive, double what it ought to be, perhaps more than double what it ought to be until the depreciation reserve works itself down to something like a reasonable figure, which I would say would be 25 per cent of the depreciable property investment. That seems to me to be ample in a depreciation reserve, for an electric railway company. Until that has been worked down, I believe that a depreciation allowance annually of quite a little less than one-half the present would be ample.

"If I am right in my exhibit No. 22, the retirals in the next five years will perhaps amount to not more than say $400,000. If you cut this depreciation allowance in two, to $125,000, that would amount to in five years $625,000 or 50 per cent more than is necessary to take care of the next five-year retirals. I believe it should be cut to more than that, because of the fact that in my opinion this balance as related to the total property investment and the investment in depreciable property is entirely too large."

It will be noted that Mr. Richey says that the property is up to 100 per cent operating condition—much better condition than perhaps the average property in any city of the same size in the United States.

Mr. Burpee says that the property is in good condition.

Now there can be no doubt whatever that a great deal of wear and tear is taken up in maintenance and that the better a property is maintained the less the depreciation will be.

Mr. Burpee says that as long as a car is in operation all the repairs and the renewals of that car are taken care of by maintenance and that the same thing applies to the track.

The property of the company has admittedly been maintained at a high standard of efficiency which, perhaps, accounts for the fact that since the depreciation account was first established in the year 1917 only $398,000 has been charged to it. It is evident that the maintenance account has been used to a very considerable extent to reduce depreciation.

For the year 1931 there has been credited to the depreciation reserve $250,910.58, which is about 4·38 per cent of the depreciable property.

Mr. Richey says that the amount put aside for depreciation during the last few years is entirely too large and that 25 per cent of the book value of the property would be ample reserve to be held at any time. He would cut the annual reserve allowance until the total reserves were down to 25 per cent. His opinion is that the annual reserve should be cut to $125,000 until the total is brought down to a figure in reasonable proportion to the total cost.

As pointed out above the company only has depreciable assets costing $5,729,000, for which there was provided at the end of 1931 a depreciation reserve of $2,438,756, which was increased in 1932 by nearly $250,000.

In his evidence Mr. Richey stated at p. 2793:—

> "I believe 25 per cent would be safe; I believe an electric railway is perfectly safe with a depreciation reserve as large as 25 per cent of its depreciable property."

No witness called on behalf of the company has contradicted this statement.

In my opinion, considering the splendid condition in which the property of the company has been maintained entirely too much has been set aside in past years for depreciation, and for the future this should be kept down to reasonable requirements. I would think that $150,000 a year for the next five years would be a sufficient amount.

There is another finding of the Board in the judgment of 1928 with which I feel obliged to differ and that is the allowance of 2 per cent by way of surplus.

In the judgment of the Board on the former hearing, 34 C.R.C. at p. 323, it is said:—

> "It is patent that the business which makes no provision for surplus is following an unwise policy. A surplus is an insurance fund which not only puts the business in a stronger position from the standpoint of necessary financing, but also assists in time of need, in the continuance of dividends.
>
> "In the Bell Telephone Case, in which decision was rendered April 1, 1921 (11 B.R.C. 35), 27 C.R.C. 231, at p. 244, Mr. Hagenah, the expert for the city of Montreal, recognized a 4 per cent surplus as being desirable under normal circumstances. While he favoured 2 per cent in the case in question, as an emergency measure, he expressed the opinion that 4 per cent was not unreasonably large, and that it would be poor business and a bad course for the company to adopt and advertise to the public that it was paying in dividends every cent that it was earning over and above fixed charges. A surplus is a necessary feature of a normal return on a properly organized business. In the present case a 2 per cent surplus does not err on the exorbitant side."

In addition to allowing 7 per cent on the total capital cost the Board allowed 2 per cent.

In an ordinary rate case a provision for a surplus might be justified but here we are bound by the provisions of the contract under which we are alone exercising jurisdiction. The contract makes ample provision for operating expenses, maintenance and depreciation, and then authorizes " a just and reasonable return on the capital investment." To allow anything beyond that would, it seems to me, be contrary to the terms of the contract.

The question which has given me a great deal of concern is the percentage which will constitute " a reasonable return to the company on the capital investment." It will be noted that the contract does not name any fixed percentage of return on capital investment, but leaves it to the discretion of the Board to determine what is " a reasonable return."

Annual returns upon capital and enterprise like wages of employees, cost of maintenance and related expenses have materially decreased during the last few years. A rate of return upon capital invested in street railway lines which may have been proper a few years ago, no longer furnishes a safe criterion for the present or for the future.

The general rule as to fair return has recently been stated by the Supreme Court of the United States in Bluefield Water Works v. Public Service Commission, 262 U.S. 679, at pp. 692-5:—

> " What annual rate will constitute just compensation depends upon many circumstances and must be determined by the exercise of a fair and enlightened judgment, having regard to all relevant facts. A public utility is entitled to such rates as will permit it to earn a return on the value of the property which it employs for the convenience of the public equal to that generally being made at the same time and in the same general part of the country on investments in other business undertakings which are attended by corresponding risks and uncertainties; but it has no constitutional right to profits such as are realized or anticipated in highly profitable enterprises or speculative ventures. The return should be reasonably sufficient to assure confidence in the financial soundness of the utility, and should be adequate, under efficient and economical management, to maintain and support its credit and enable it to raise money necessary for the proper discharge of its public duties. A rate of return may be reasonable at one time, and become too high or too low by changes affecting opportunities for investment, the money market, and business conditions generally. . . . .
>
> " Investors take into account the result of past operations, especially in recent years, when determining the terms upon which they will invest in such an undertaking. Low, uncertain, or irregular income makes for low prices for the securities of the utility and higher rates of interest to be demanded by investors."

In my opinion seven per cent is a reasonable return and I so find.

Having indicated the principles upon which we should act in fixing the tariff of fares, it is necessary now to determine the amount of revenue which the company should receive during the years 1933-1938 in order to satisfy the terms of its agreement with the city. To this end I first wish to show the results of an examination of the company's accounting as disclosed by its books.

For some weeks past the Board's Accountant, Mr. Swinney, has been making an examination of these books and his report, a portion of which I incorporate as a part of this opinion, reads as follows:—

"The company segregated the investment between the system under agreement with the city and outside lines as follows:—

	System under agreement	Outside lines	Total Investment
At Dec. 31, 1930..	$6,321,660 21	$575,535 00	$6,897,195 21
At Dec. 31, 1931..	6,379,682 81	537,659 21	6,917,342 02
Dr.	$ 58,022 60	$ 37,875 79	$ 20,146 81

"In arriving at the amount of investment in the system under agreement upon which to calculate a return the company added to the amount of investment at January 1, 1931, one-half of the capital additions during the year and "working capital" which consisted of the balances in the following accounts at December 31, 1931:—

Capital Investment at January 1, 1931..		$6,321,660 21
One half capital additions during the year..		29,011 30
Working capital..		112,143 47
Conductors' changes	$ 11,126 32	
Ticket office changes..	10,100 00	
General stores..	80,578 00	
Bus stores	3,683 46	
Stationery stores..	6,655 69	
	$112,143 47	
		$6,462,814 98

"Examination of the accounting records indicates that the accounts should be:—

	System under agreement	Outside lines	Total Investment
Capital investment at December 31, 1931..	$6,370,524 59	$546,817 43	$6,917,342 02
Deduct one half capital additions during the year.. ..	29,011 30 add	18,937 90	10,073 40
	$6,341,513 29	$565,755 33	$6,907,268 62
and working capital	112,143 47		112,143 47
	$6,453,656 76	$565,755 33	$7,019,412 09

"Included in the amount of $6,370,524.59 representing investment in system under agreement are the following amounts which should be eliminated.

Non operating property..		$107,559 45
Plant inventory..		5,000 00
Track—$680 bonus to city 1930 not paid..		680 00
Car shops and barns..	$2,200 25	
Machinery and tools..	94 80	
Rolling stock, cars..	604 30	
	$2,899 35	
Not paid for at Dec. 31, 1931, deduct half..		1,449 68
		$114,689 13

"Included in the amount of $112,143.47 representing working capital are the following amounts which should also be eliminated:

Material and supplies not paid for at December 31, 1931.. ..	$ 3,117 42
Conductors' changes..	11,126 32
Ticket office changes..	10,100 00
	$24,343 74

"*Non-operating property.*

"According to the statement furnished by the vice-president and manager of the company the following property included in the investment account is not used in the operation of the railway:—

Land and office building at 248 Albert street..	$66,402 89
Buildings at 136, 138, 140 Nelson street..	9,175 21
Land and building at 113 Holmwood avenue..	6,372 89
Tuck shop at Holland avenue..	160 00
Lots 38, 39, 40 Flora street North side..	5,914 80
Lots 39, 40 McLeod street south side..	3,943 20
Lots 223, 224 Grove avenue south side..	1,314 40
Lot 27A Rockcliffe, east side Cloverdale avenue..	1,259 30
Lots 10, 11, 13, 14, 15 Middle street south side..	2,962 09
Lots Victoria Park property..	9,318 16
Lots 2106, 2109 Byron avenue south..	528 37
Lot 2103 Huron avenue east..	96 06
Lot 2102 Holland avenue west..	112 08
	$107,559 45

"*Plant inventory.*

"The company has included in its investment an amount of $5,000, designated as 'Plant inventory.' This item represents the cost to the company of two plant ledgers in which are maintained a record of its investment account and account 'Depreciation Reserve.' Surely it cannot be considered that the cost of this accounting record of the company is a proper charge to its investment account. It is, in fact, a sub-ledger in which is kept the record by classes and units of the investment in road and equipment supporting the total carried in the general ledger. There is no more reason to include the cost of compiling this record in the investment account than there could be to include the cost of preparing the journal, posting the ledger and drawing off the monthly balances. As an indication that the inclusion of the amount of $5,000 in investment is illogical, attention is directed to two journal entries in December, 1930, at folio 163 by which the amounts of $877.14 and $75, totalling $952.14, were charged to 'Salaries, general office clerks' and credited to 'Plant inventory' for the purpose as explained 'to record cost of plant inventory on books in round figures at $5,000.' This action is rather unusual as in no other instance of record was the amount of the company's expenditure in road and equipment rounded out to even money, and if followed would defeat the purposes of accounting which are to correctly set forth the transactions as they have actually occurred.

"*Track.*

"Included in the amount of investment at January 31, 1931, was an amount of $680 charged to account 'Track' by journal entry of December, 1930, at folio 173. This amount represents a bonus to the city to cover additional paving during 1930. To date the amount has not been paid to the city of Ottawa and is included in the balance of account 'Reserve for contingencies' together with mileage assessments which are unpaid and in litigation.

" Car shops and barns; Machinery and tools; Rolling stock—Cars.

" Included in the amount of investment at December 31, 1931, was an amount of $2,899.35 made up as follows:—

Remodelling 56 comerford window locks including the making up and installing of locking devices..	$ 603 15	
Four per cent sales tax on new material..	1 15	
Rolling stock-cars..		$ 604 30
Dismantling Albert street car barn, stores building, Conductors' room..	$1,499 20	
Four per cent sales tax on new material..	25 30	
Building office in coach garage as per instructions..	661 90	
Four per cent sales tax on new material..	13 85	
Car shops and barns..		$2,200 25
Making up pattern for switch box as per instructions.	91 15	
Four per cent Government sales tax..	3 65	
Machinery and tools..		94 80
Total..		$2,899 35

" These amounts were included in and paid for through the medium of voucher No. 32449 dated January 10, 1932.

" As one-half of the amount of the capital additions during the year was deducted by the company to arrive at the average investment for the year, one-half of $2,899.35, or $1,449.68, is eliminated from the investment.

" Material and supplies not paid for at December 31, 1931.

"By journal entry at folio 93, December 31, 1931, 'Inventory stores—general,' $2,001.74 and 'Inventory stores—buses,' $1,115.68 were charged and 'accounts payable' credited $3.117.42 'for stores received at Champagne stores and bus stores recorded in stores ledgers at date but not in general ledger.'

" The articles were paid for in January, 1932, and the above referred to entry reversed in the accounts for February, 1932.

" It was the practice of the company during the other months of the year to debit stores at the time payments were made by the distribution of vouchers. For this reason and the fact that the articles were not paid for at December 31, 1931, the amount has been eliminated.

" Conductors' changes; Ticket office changes.

" Included in the amount of $112,143.47, 'Working capital' is an amount of $21,226.32 representing 'Conductors' and ticket office changes.'

" Conductors' and agents' deposits for ticket sales are on a current basis and in the form of purchases of additional tickets. The sales of tickets represent payments in advance and permits the company to have the use of the car riders' money until such time as the tickets are used. Cash fare collections are current transactions.

" The expenditures of the company are on a credit basis that ranges from a few days to a month or more from the time the expenses are incurred until the amounts are paid.

" On the liability side of the company's balance sheet at December 31, 1931, under the heading of 'Reserves' was an amount of $56,587.26 described as 'Unredeemed tickets and general.' Of this amount $50,000

is provided for unredeemed tickets and the remainder of $6,587.26 represents adjustments of taxes. By this reserve it is apparent the company acknowledged a liability and that the car riders had purchased tickets which had not been used. The company was, therefore, deriving the benefit of the use of this money without interest to it.

"In view of the fact that the car riders pay either at the time of their ride or in advance if tickets are purchased and the company pays its expenses a few days or a month or more after they are incurred seems to preclude the necessity of providing any working capital in the form of cash.

"If the amount were allowed it would, in effect, penalize the car riders for the use by the company of the car riders' money.

"*Depreciation Reserve at December 31, 1930.*

"As referred to hereinbefore the records of the company indicate that at December 31, 1930, the balance in account "Reserve for depreciation" applicable to the system under agreement was $2,252,411.06. Included in this amount was $20,977.28, representing the amount applicable to non-operating property. Deducting $20,977.28 from $2,252,411.06 results in an amount of $2,231,433.78, representing the balance in account "Reserve for depreciation" applicable to the operating property included in the portion of the system under the agreement.

"It is proper to reduce the average investment and working capital by the amounts of $2,231,433.78, representing the balance in account "Reserve for depreciation" at December 31, 1930, applicable to operating property included in the portion of the system under agreement and by $114,440.86 the average depreciation accruals during the year of 1931 arrived at by taking one-half of the annual depreciation charged to income and credited to reserve minus one-twenty-fourth of the annual depreciation.

"After deducting these amounts the corrected total upon which a return should be computed is $3,968,749.25."

No evidence in regard to 1932 depreciation was given at the hearing. We know, however, that $263,859.91 was set aside for depreciation, and, from a statement submitted by the company to Mr. Swinney, we know that the depreciation reserve account for the whole system was increased by the net amount of $185,441.10 in that year. Assuming that the same principles of accounting are continued to the end of the present period as were followed during the year 1931, it is probable that the amount upon which the return should be computed at the beginning of the next five year period will be approximately $300,000 less than it was at December 31, 1931. This would give $3,668,749.25.

We must next consider the estimated capital expenditures for the five-year period 1933-1938. Exhibit No. 13 filed by the company shows the estimated capital expenditure for this period as $748,066.74. This exhibit gives the details of track renewals which the company may be called upon to do showing $95,931.92 for straight track renewals and $44,248.94 for special track work. The latter work Mr. Burpee says must be done, but whether the balance of the work will be done is problematical.

It is customary for the company to renew its steel rails and tracks at the time the city replaces the pavements. Mr. Lionel Hunter, in charge of construction of pavements and sidewalks for the city, went over the several items on this Exhibit and his evidence is that the pavements on many of the streets named would not be done within the five-year period.

Mr. Richey agrees with Mr. Burpee as to the amount required for special track work, but thinks $48,000 sufficient to cover straight track renewals.

The largest item in Exhibit No. 13 is $310,642.32 for replacing 29 passenger cars. The total cost of the new cars is placed at $590,904 from which $280,261.68, the cost of the old cars, is deducted. Mr. Burpee in his evidence said:—

> "We will probably need the whole thirty. The present cars are not of the modern type. They are more or less obsolete in design. They are not interchangeable with others. They cannot be used for one-man operation and recently I have had several of them opened up and found they are almost completely rotten underneath the sheeting. They are on the average, I would say, twenty to twenty-five years old; most of them being over twenty-two years of age."

Mr. Richey, on the other hand, agrees that six of the 29 cars should be scrapped and says that, if the service requires it, that six additional cars should be bought. As to the remaining 23 cars, he says they ought to be and could economically be operated for six or seven years longer.

Now the company has in all about 140 passenger cars. In the winter of 1925-26 it took 113, and in the winter of 1929-30, 109 cars to handle the total service, while in 1932 only from 90 to 91 cars were used.

Mr. Richey estimates for the replacement of six cars the sum of $47,370 net addition.

With all the extra cars available and the smaller number of passengers travelling, I have grave doubts if even these six will be replaced in the next five-year period.

The other important items in exhibit No. 13 are $44,628.84 for snow equipment and $27,614.72 for buses. Mr. Burpee in his evidence, speaking of snow equipment, says that the portion of this intended to be scrapped was "among the early sweepers and will certainly have to be replaced very shortly. I think some of them are from as far back as 1909. The same thing applies to wing ploughs. They were old passenger cars which had been converted into wing ploughs hand operated and so on, and are more or less obsolete."

Now the largest item of snow equipment is 30 one-ton Ford snow trucks estimated to cost $31,860. Mr. Burpee says the old trucks were purchased as far back as 1918 and have been used in the winter months for hauling snow off the streets.

Mr. Richey in his evidence points out that the snow equipment is used only for a very short time each year and he thinks for replacement that two-thirds of Mr. Burpee's figure, namely $30,000, would be sufficient.

With regard to buses: Mr. Burpee says that some of these are already seven years old but they are all now working.

Mr. Richey says that there is a difference of two or three years in the ages of the eldest and the youngest ones. He was given by Mr. Burpee the total mileage which had been operated by each individual bus and he states that the minimum mileage was 143,585 and the maximum 214,256. In his opinion these buses will give service up to 300,000 or 400,000 miles. He further states that out of the 11 buses there are only seven in daily operation, one of which is used occasionally for school children. Mr. Richey thinks that at the outside not more than five buses will have to be replaced and for these five he allows the sum of $12,500.

Mr. Richey estimates that $357,120 will cover the capital additions. While some of the equipment may be somewhat obsolete, I am satisfied that as long as present conditions last the company will make every endeavour to carry on with the old equipment. I think that if the actual amount of the Somerset Street bridge and 70 per cent of the remainder of the company's estimate were allowed for capital additions it would prove to be sufficient.

The company's estimates were as follows:—

Retire Old	Add New	Net
$775,426 80	$1,523,493 54	$748,066 74

Deducting actual amount for Somerset Street bridge:—

$775,426 80	$1,523,493 54	$748,066 74
	121,241 65	121,241 65
$775,426 80	$1,402,251 89	$626,825 09

Calculating 70 per cent of these amounts:—

$542,798 76	$ 981,576 32	$438,777 56

One-half of the last named amounts to arrive at the average over the five-year period:—

	$271,399 38	$ 490,788 16	$219,388 78
Add Somerset Street bridge		121,241 65	$121,241 65
	$271,399 38	$ 612,029 81	$340,630 43
Add new investment amounting to			$612,029 81
Deduct one-half of the accrued depreciation of $150,000 per year for 5 years (one-half of $750,000)			375,000 00
Net increase in investment and working capital..			$237,029 81

Adding $237,029.81 to $3,668,749.25, estimated as the amount at the beginning of the period upon which the return should be calculated, results in $3,905,779.06.

Seven per cent of $3,905,779.06 is $273,404.53.

The most difficult problem of all remains to be determined: What tariff of fares will produce the required revenue? The uncertain factors are:—

(1) The number of passengers that may be expected to travel;

(2) The effect of an increased fare in reducing the number of passengers.

(3) The amount of investment.

At the hearing the company filed as exhibit No. 16 an estimate of the probable number of passengers that would be carried and of the return anticipated for the five-year period 1933-1938. Assuming a fare of 10 cents for adults and 5 cents for children, the estimate reads in part as follows:—

"The passengers carried in the inside lines in 1927 were, approximately..	34,500,000
"The passengers carried in the inside lines in 1931 were, approximately..	25,000,000
"A decrease of..	9,500,000"

a percentage decrease of approximately 27 per cent for four years. The first *9* months of 1932 shows a further decrease of approximately 2,000,000 passengers.

Assuming the decrease in the passengers during the next five-year period is 30 per cent below the 1931 figure the result would be: 17,500,000 annually.

An examination of the different fare paying passengers, carried by the company during the month of August, 1932, revealed that there might be approximately 97 per cent full fare paying passengers and 3 per cent at the reduced rate.

To summarize the above, the results are as follows:—

"A decrease of 30 per cent in passengers—	17,500,000 x 97% x 10c..	1,697,500 00
	17,500,000 x 3% x 5c..	26,250 00
		1,723,750 00"

The revenue of the company from inside lines during the years 1928 to 1932 is as follows:—

1928	1929	1930	1931	1932
$1,769,000.00	$1,823,000.00	$1,704,000.00	$1,587,000.00	$1,419,000.00

The revenue for the first four months of 1933 was $474,622 for the system, or at the rate of $1,424,000 for the year. The remaining eight months, however, will probably not show so large a return as I understand that the first four months are usually better than the last eight. Moreover, if the fares are increased, one must look for a certain decrease in revenue as the evidence established that every time the fare is increased a certain number of passengers is lost.

Mr. Burpee in his evidence said that the inauguration of a ten cent fare, which is the one asked for by the company, would probably mean a 30 per cent drop in passenger traffic. In 1927 the company carried 34,000,000 passengers and in 1931 only 25,000,000. Mr. Burpee in his estimate takes 30 per cent off the figure for 1931 and thereby arrives at 17,500,000 as the probable number of passengers that will be carried in each of the years 1933-1937.

Mr. Richey, the expert called by the city, speaking in October, 1932, expressed the opinion that we had reached the bottom of the depression and were on our way back. Consequently, he takes the 1931 figures, 25,000,000, as typical of the future five-year period.

On the basis of a variation of the present tariff by the substitution of a ten cent fare and the abandonment of 17 tickets for $1, he has prepared exhibit No. 29, an estimate showing $1,652,000 as the probable revenue for each year of the five-year period.

The above is all the evidence we have bearing on the probable number of passengers that will be carried during the 1933-1938 period. The company estimates 17,500,000 per year and the city 25,000,000.

One guess is perhaps as good as another because after all the question is largely one of guesswork. No one can say with any certainty what the future will bring forth. The witnesses in the 1927 hearing had to figure in the role of minor prophets but none of them made much of a success of it. In normal times it is not easy to fix with any degree of accuracy the probable number of passengers that will be carried in future years. Under present conditions the task is almost insuperable. Everything depends upon world conditions. Present indications undoubtedly point to economic recovery, but the future is most uncertain.

The way I propose to deal with the matter is to take a figure between the estimates put forward by the Company and the city respectively, although somewhat nearer the company's estimate. I regard the company's estimate as more nearly accurate because the returns for the first four months of 1933 indicate a sharp decline in passenger traffic and also because the increase of fares which we are obliged to give will itself have the effect of reducing the number of passengers that will be carried. The estimate I make is 19,395,416 per year for the five-year period.

The estimate is arrived at in the following way: For the first four months of 1931 there were 9,421,273 passengers carried. For the first four months of 1933 there were 7,256,142, a decrease of 22·98 per cent. The total number of passengers for the year 1931 was 25,182,311. Reducing this number by

22·98 per cent gives 19,395,416 as the probable number of passengers for the year 1933. This figure I propose to take as the yearly average number of passengers for the five-year period 1933-1938.

The tariff of fares which I would adopt in substitution for the present tariff is the following:—

BETWEEN THE HOURS OF SIX O'CLOCK A.M. AND TWELVE O'CLOCK MIDNIGHT

CASH FARES

Persons over 51 inches in height..	10 cents
Persons 51 inches and under in height..	5 cents

TICKET FARES

Persons over 51 inches in height..	2 tickets for 15 cents
Persons 51 inches and under in height..	7 tickets for 25 cents
School children, certified in writing to the company to be under the age of 14 years, by their teacher in a public or separate school, or collegiate institute, or any such private schools as may be recognized by the company, and to be in attendance at such schools; good only between the hours of 7 o'clock a.m. and 5 o'clock p.m..	14 trips for 50 cents
Between the hours of 12 o'clock midnight and 6 o'clock a.m. All persons..	10 cents

Applying the percentage of the total applicable to each class of fare during the first four months of 1933 the following results are obtained:—

	Percentage	
10 cents straight—Adults }	1·90	$ 16,583 09
5 cents straight—Children }		
Tickets—Adults..	96·23	1,399,815 68
Tickets—Children..	1·87	12,953 36
		$1,429,352 13
Letter Carriers, Special Cars, etc.		20,230 65
		$1,449,582 78

Under the agreement it is the duty of the Board under section 9 (*a*) to authorize such tariffs as will produce a sum sufficient to provide:—

(1) Operating costs and the cost of keeping up the transportation system in an efficient manner;

(2) Making proper provision for its depreciation, renewal and replacement;

(3) A just and reasonable return to the company of the capital investment.

First, as to operating expenses and maintenance: Between 1922 and 1933 they have ranged from a peak of $1,373,000 in 1927 to a low of $967,812.00 in 1932. Since 1927 they have been going down every year following the decrease in revenue. I think $1,000,000 is a reasonable sum to allow for the average yearly operating and maintenance expenses and taxes.

The amount of revenue, therefore, required annually for the five-year period 1933-1938 is:—

Operating costs and maintenance..	$1,000,000 00
Depreciation..	150,000 00
Return on investment..	273,404 53
	$1,423,404 53

If my estimates turn out to be accurate the tariff of fares above mentioned will produce $26,178.25 in excess of the requirements of the company.

This is equivalent to only 349,043 passengers, or 1·8 per cent of the total estimated passengers.

In dealing with estimates applicable to a period terminating so far in the future and with such probabilities of changing conditions throughout the interval, numerous situations and events are certain to alter the results. I do not believe a smaller margin should be considered.

I would direct that the company file a tariff of fares, effective August 13, 1933, in line with the tariff above set out.

OTTAWA, June 6, 1933.

The Deputy Chief Commissioner and Commissioners Norris and Stone concurred.

McLEAN, ASSISTANT CHIEF COMMISSIONER:

The Chief Commissioner in his reasons for judgment holds that there is a difference between capital investment and capital cost. He sets out that the Board in its decision rendered in 1928—" in effect held that capital investment as used in the contract means capital cost, and that depreciation had no bearing on the question;" and he states that he is unable to accept this position. This is a ruling that the depreciation reserve shall not be part of the basis on which return is necessary and is to be computed.

I participated in the former judgment wherein the investment of the depreciation reserve in the plant was found justifiable involving a return thereon. I do not find in the present case such a changed condition of facts as to justify a change of opinion on the facts. At the same time, I recognize that fundamentally what is involved in this connection is a ruling of the Chief Commissioner on a question of law, and that under section 12, subsection 2, of the Railway Act this ruling is final.

The former decision in dealing with depreciation accepted the straight line system; in the present case it is proposed that the sinking fund system should be used. At the hearing in the Telephone Case (see vol. 480, October 21, 1926, pp. 14085 and 14810), Dr. Maltbie, who appeared as an expert for the city of Toronto, and who is now Chairman of the Public Utility Board of New York State, and has had extensive experience in connection with public utility investigations, stated, that with conditions as they exist, it is difficult to apply the sinking fund system and keep it applied, carrying it out as it must be carried out logically, and that to do this at present is too much of a task to ask of a corporation to apply it thoroughly. Continuing he said: " Theoretically there is much to be said in favour of it. A very strong argument can be made for it theoretically, but it is extremely difficult to apply it directly, and the California Commission has had trouble all the time because the corporations did not apply it as they thought they ought to apply it." The Chief Commissioner is of opinion that the depreciation reserve is in effect held in trust for a specific purpose, and that to comply with the contract the company should follow in principle the sinking fund system and from time to time invest the money and give the City the benefit of interest accruals.

I find no justification in point of fact which would justify me in changing my opinion on the facts. At the same time, I bow to the decision of the Chief Commissioner on the question of law.

In the matter of depreciation a decrease in the annual contributions for the quinquennial period is recommended. It is reasonable to look at this matter from the standpoint of emergency, and on this basis I agree.

The former judgment recognized the justification of a 2 per cent surplus. Here again it seems to me that on the facts there is no justification in fact for a change, but, at the same time, the Chief Commissioner holds that there is a distinction between the facts as applicable in an ordinary rate case and those applicable in the present wherein the Board is bound by the provisions of the

contract under which jurisdiction is exercised. He sets out that the contract makes ample provision for operating expenses, maintenance and depreciation, and then authorizes " a just and reasonable return from capital investment." The reasons for judgment continue—" to allow anything beyond that would, it seems to me, be contrary to the terms of the contract." Here again the decision of the Chief Commissioner on the question of law prevails.

In respect of the recommendations as to rate adjustments as set out in the judgment of the Chief Commissioner, I am in agreement.

June 7, 1933.

ORDER No. 49943

In the matter of the application of the Ottawa Electric Railway Company, hereinafter called the " Applicant Company," under Section 334 of the Railway Act, for approval of its Standard Passenger Tariff C.R.C. No. 16, cancelling C.R.C. No. 14, effective August 13, 1933; also its Special Passenger Tariff C.R.C. No. 17, cancelling C.R.C. No. 15, effective August 13, 1933.

File No. 6949.2

SATURDAY, the 10th day of June, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*
F. A. LABELLE, *Deputy Chief Commissioner.*
Hon. T. C. NORRIS, *Commissioner.*
G. A. STONE, *Commissioner.*

Upon hearing the application at the sittings of the Board held in Ottawa, October 18, 19, 21, and 22, 1932, and May 19, 1933, in the presence of counsel for the applicant company and the city of Ottawa, and what was alleged; and upon reading the written submissions filed—

It is Ordered:

1. That the applicant company's said Standard Passenger Tariff C.R.C. No. 16, be, and it is hereby, approved; the said tariff, with a reference to this order, to be published in at least two consecutive weekly issues of the *Canada Gazette.*

2. That section 1 of the applicant company's said Special Passenger Tariff C.R.C. No. 17 be amended, effective August 13, 1933, by substituting for the fares shown therein the following, namely:—

BETWEEN THE HOURS OF SIX O'CLOCK A.M. AND TWELVE O'CLOCK MIDNIGHT

CASH FARES

Persons over 51 inches in height..	10 cents
Persons 51 inches and under in height..	5 cents

TICKET FARES

Persons over 51 inches in height..	2 tickets for 15 cents
Persons 51 inches and under in height..	7 tickets for 25 cents
School children, certified in writing to the company to be under the age of 14 years, by their teacher in a public or separate school, or collegiate institute, or any such private schools as may be recognized by the company, and to be in attendance at such schools; good only between the hours of 7 o'clock a.m. and 5 o'clock p.m...	14 trips for 50 cents

BETWEEN THE HOURS OF 12 O'CLOCK MIDNIGHT AND 6 O'CLOCK A.M.

All persons..	10 cents

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 49894

In the matter of the application of the Canadian National Railways, hereinafter called the "Applicants," for permission to cancel, upon less than statutory notice, an erroneous rate on bituminous coal from Toronto, Ontario, to Grafton, Ontario.

File No. 27612.77

MONDAY, the 29th day of May, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

Upon its appearing that, through printer's error, a rate of $1.10 per ton of 2,000 pounds was published on bituminous coal from Toronto to Grafton, Ontario, in Supplements Nos. 60 and 64 to the applicants' Tariff C.R.C. No. E-1631,—

It is ordered: That the applicants be, and they are hereby, permitted to publish and file, upon three days' notice, a supplement to Tariff C.R.C. No. E-1631 cancelling the said rate of $1.10 per ton of 2,000 pounds now published in Supplements Nos. 60 and 64 to the said tariff; and that a reference to this order be shown in such cancellation supplement.

C. P. FULLERTON,
Chief Commissioner.

GENERAL ORDER No. 513

In the matter of applications, under Section 348 of the Railway Act, for approval of the conditions limiting liability to be printed on free annual and trip transportation, and signed by the holder thereof, the said conditions being on file with the Board under file No. 496.43.

THURSDAY, the 1st day of June, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*
Hon. T. C. NORRIS, *Commissioner.*
J. A. STONEMAN, *Commissioner.*
G. A. STONE, *Commissioner.*

Upon reading the applications and what has been alleged in support thereof,—

It is ordered: That the conditions on passes of the undermentioned companies, which are on file with the Board under file No. 496.43, whereby in each case the liability of the company is impaired, restricted, or limited, be, and the same are hereby, approved; the names of such companies being as follows:—

Algoma Central and Hudson Bay Railway,
British Columbia Electric Railway,
Canadian Pacific Railway,
Central Vermont Railway,
Cumberland Coal and Railway,
Dominion Atlantic Railway,

Esquimalt and Nanaimo Railway,
Great Northern Railway,
Hull Electric Company,
Lake Erie and Northern Railway,
London and Port Stanley Railway,
Maritime Coal, Railway and Power Company,
Michigan Central Railroad,
Napierville Junction Railway,
New York Central Railroad,
Nipissing Central Railways,
Northern Alberta Railways,
Northern Pacific Railway,
Pere Marquette Railway,
Quebec Central Railway,
Quebec Railway, Light and Power Company,
Sydney and Louisburg Railway,
Temiscouta Railway,
Toronto, Hamilton and Buffalo Railway,
Wabash Railway,
White Pass and Yukon Route,
Detroit and Windsor Subway Company—Detroit and Canada Tunnel Company,
International Railway—
Falls View Bridge,
Queenston-Lewiston Bridge,
Niagara Lower Arch Bridge Company.

C. P. FULLERTON,
Chief Commissioner.

ACCIDENTS REPORTED TO THE OPERATING DEPARTMENT, BOARD OF RAILWAY COMMISSIONERS, FOR THE MONTH OF MARCH, 1933

Railway accidents	123, with	13 persons killed	and 127 injured.
Railway accidents at highway crossings	13, with	5 persons killed	and 17 injured.
	136	18	144

	Killed	Injured
Passengers	1	16
Employees	1	95
Others	16	33
	18	144

DETAILS OF ACCIDENTS AT HIGHWAY CROSSINGS

No. of Accidents		
	Nova Scotia	
1	Automobile—Auto driver paid no attention when approaching crossing. N.S. licence 22647.	

ONTARIO

1 Automobile—Auto driver drove through gates in lowered position and ran into side of car. Ont. licence D-1238.
1 Automobile—Auto driver's attention fixed on autos ahead. Ont. licence R-5713.
1 Automobile—Auto driver approached crossing with his mind preoccupied. Ont. licence V-1374.
1 Automobile—Excessive speed of auto. Ont. licence A-7553.
1 Horse-drawn vehicle—Occupant of buggy failed to see or hear train.
1 Pedestrian—Attempted to cross in front of train, slipped and fell.

QUEBEC

3 Automobiles—Auto drivers failed to stop for crossing. Quebec licences 113-977, 33371, and 8891.

SASKATCHEWAN

1 Automobile—Auto driver under influence of liquor. Sask. licence 6432.
1 Pedestrian—Man went asleep lying across track.

ALBERTA

1 Auto truck—Truck driver failed to take any precautions approaching crossing. Alta. licence BT-1301.

Of the thirteen accidents at highway crossings, ten occurred at unprotected crossings, and three at protected crossings. Ten of the accidents occurred during the daylight hours and three at night.

OTTAWA, June 1, 1933.

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The Board of

Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

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Complaint of St. Catharines Suburban Area Commission Re Approaches to 3rd Overhead Bridge East of St. Catharines over the Canadian National Railways, Mileage 10.94 Grimsby Subdivision.

(File No. 12113).

JUDGMENT

FULLERTON, CHIEF COMMISSIONER:

The road from the city of St. Catharines to Welland crosses the Canadian National Railways by means of an overhead bridge between lots 16 and 17, in the 8th concession of the township of Grantham.

The bridge was originally of wooden construction. In 1909 it was reconstructed and raised 3·58 feet bringing it up to 22·6 feet above the base of the rail. This was authorized by an order of the Board, No. 8438, dated October 21, 1909.

In 1909 when the bridge was reconstructed the road was an unimportant side road with very light traffic.

In 1917, under the Highway Improvement Act, it was made a county road, and in 1927 a suburban road under the jurisdiction of the St. Catharines Suburban Area Commission.

In 1927 the road allowance, which is 30 feet wide, was paved with concrete to a width of 18 feet.

The railway crosses the road in a cut of about 12 feet. The plan shows that the north approach is about 250 feet long, the ground being comparatively level. The south approach is about 634 feet long, the ground falling rapidly in a southerly direction.

The St. Catharines Suburban Area Commission wish to have repairs made to the approaches on the south side and ask that the Canadian National Railways pay the cost of the same.

65467—1

There is no record of any complaint regarding the approaches to the bridge from the time they were constructed nearly eighty years ago until after the road was paved in 1927. The complaint now is that the approaches are too narrow for the present paved road and require to be widened to properly support the pavement. The trouble is on the southern approach, and it appears that the water cuts down the side of the fill and undermines the pavement.

Mr. Weir, the Companys Engineer, describes the condition as follows:—

> "Q. What condition is the roadway and the approaches in at the present time?—A. This is a concrete road with a curb on each side; an 18 ft. concrete pavement, the curb extra on the outside.
>
> "Q. What condition are the approaches in; take the approaches on the east side for instance?—A. The fills on each side are narrow, so that the slope starts at the concrete pavement and goes down on a 1½ to 1 slope to the bottom of the gully.

He suggests that the shoulders should be filled out five or six feet on each side and figures the cost at $2,600.

There is little, if any, authority dealing directly with the liability of railways to repair the approaches to overhead bridges. Under the English Act, Railway Clauses Act 1845 (8 Vict., Chap. 20), section 56, when the railway company alters the level of a road an obligation is imposed upon it to see that it is "restored to as good a condition as the same was in at the time when the same was first interfered with by the company." When once that is done there is no further duty to repair. West Lancashire v. Lancashire & Yorkshire Railway Company, 1903, 2 K.B. 394.

No such provision is contained in our Railway Act, but section 264 provides that—

> "Every structure by which any railway is carried over or under any highway or by which any highway is carried over or under any railway, shall be so constructed, and, at all times, be so maintained, as to afford safe and adequate facilities for all traffic passing over, under or through such structure."

Nor is there any specific provision in our Act dealing with the maintenance of the approaches to a bridge in cases where the road has to be raised to allow of its passing over the bridge. In such cases the Act does provide that the grade shall not, unless the Board otherwise orders, be greater than five per cent, and the Standard Regulations of the Board affecting Highway Crossings provide that a good and sufficient fence at least four feet six inches in height from the surface of the approach or structure shall be erected and maintained on each side of such approach and the structure connected with it. There is no statutory obligation upon the railway company to keep in repair the approaches to an overhead bridge across the railway. No doubt such a condition might be imposed by the Board under the provisions of section 256, but it has not been the practice of the Board so to do.

The rule followed by the Board in such cases is that, apart from special circumstances, the municipality is responsible for the maintenance of its highways. There are no special circumstances in this case. As I have already pointed out, at the time the alterations were made in the elevation of the road here in question, it was an unimportant side road with very little traffic. The authorities in control of the road apparently accepted it with its altered elevation as an entirely satisfactory road and for nearly eighty years have continued to maintain it The necessity for extraordinary expenditure upon it at the present time has been occasioned solely by the action of the Road authorities in converting it into a main road which by reason of the greatly increased traffic it was thought advisable to pave.

The application will be dismissed.

June 14, 1933.

Commissioner Norris concurred.

ORDER No. 49960

In the matter of the complaint of the St. Catharines Suburban Area Commission, hereinafter called the "Applicant," regarding the approaches to overhead bridge carrying the highway over the tracks of the Canadian National Railways in the Township of Grantham, between St. Catharines and Merritton, mileage 10·94 Grimsby Subdivision.

File No. 12113.

THURSDAY, the 15th day of June, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*

Hon. T. C. NORRIS, *Commissioner.*

Upon hearing the complaint at the sittings of the Board held at Hamilton, May 25, 1933, in the presence of counsel for the applicant and the railway company, and what was alleged,—

It is Ordered: That the complaint be, and it is hereby, dismissed.

C. P. FULLERTON,
Chief Commissioner.

Joint application of the Canadian National and the Canadian Pacific Railway Companies for an Order apportioning the cost of construction and maintenance of the subways under their Brampton (C.N.R.) and Galt (C.P.R.) Subdivisions on Bloor Street and Royce Avenue, in the City of Toronto, as between the two railways.

File No. 32453

Joint application of the Canadian National and the Canadian Pacific Railway Companies for an Order apportioning the cost of construction and maintenance of the subway under the tracks of their Brampton and Galt Subdivisions, on St. Clair Avenue, in the City of Toronto, as between the two railways.

Case No. 1353

JUDGMENT

FULLERTON, CHIEF COMMISSIONER:

This is a joint application by the Canadian National and the Canadian Pacific Railway Companies to apportion as between themselves the share of the cost of the construction and maintenance of subways at Bloor street, Royce avenue and St. Clair avenue placed on them by order of the Board. Bloor street, Royce avenue and St. Clair avenue cross the parallel lines of the two railways that run out of Toronto to the north and west. The Canadian Pacific Railway Company have the Galt Subdivision which is the main line running from Toronto to London. They have also the Toronto, Grey and Bruce Line running from Toronto to Sudbury. The Canadian National Railways have the Brampton Subdivision running from Toronto to Brampton and Guelph and on to Sarnia.

At Bloor street the Canadian Pacific Railway Company have four tracks occupying, according to the map filed by that company, 65·125 feet of the barrel of the subway. The Canadian National Railways have two tracks and space for four future tracks, together occupying 93·55 feet.

At Royce avenue the Canadian Pacific Railway Company have two main lines, two passenger platforms spanning the street, and one switching track, occupying together 76·46 feet of the barrel of the subway. The Canadian National Railways have two main tracks and provision for three future tracks, occupying in all 82·95 feet of the barrel of the subway.

At St. Clair avenue the Canadian Pacific Railway Company have one main line and space for one future track, together occupying 34·86 feet. The Canadian National Railways have five tracks and space for at least three additional tracks, together occupying 109·87 feet.

In the case of the latter subway the right of way occupied by the Canadian Pacific Railway belongs to the Canadian National Railways, and by agreement the Canadian Pacific Railway Company is to pay five per cent on the capital cost.

With regard to the subway at St. Clair avenue, the Canadian National Railways raise a point which may as well be disposed of at once. The line of the Canadian Pacific Railway Company running over this subway formerly belonged to the Toronto, Grey and Bruce Railway Company and is now held by the Canadian Pacific Railway Company under lease. It is on property of the Canadian National Railways, formerly belonging to the Grand Trunk Railway Company. Under an agreement made between the Grand Trunk Railway Company and the Toronto, Grey and Bruce Railway Company, dated October 16, 1875, the former gave to the latter the right to run their line between Weston Junction and the Queen Street Junction mainly parallel with the Grand Trunk line, upon certain terms and conditions in the said agreement set out. Paragraph 27 of the said agreement is as follows:—

> "That the Toronto, Grey and Bruce shall pay one-half of the cost of maintenance of all existing overhead bridges west of Queen street Junction on the said lines passed under by both companies' trains and shall bear and pay half the costs of all further overhead bridges which may be hereafter provided and under which the trains of both companies shall pass and the half also of the cost of the maintenance of all such during the continuance of this agreement, the word maintenance in this agreement in all cases covers and includes the cost of reconstruction as well as repairs."

Under the provisions of this paragraph it is claimed by the Canadian National Railways that this subway is included in the expression "further overhead bridges" and, consequently, the Canadian Pacific Railway Company should pay half the cost of the same.

I cannot give effect to this contention. The subway is not an overhead bridge within the meaning of this paragraph, nor do trains of both companies pass under it.

Apart from this contention, the two railway companies take opposite views as to the formula which should be used in opportioning costs. The Canadian National Railways' contention is that the cost of the barrels of the subways should be distributed on the basis of the usable length of the barrel appropriated to the respective railways, but that the cost of the approaches should be divided equally. The Canadian Pacific Railway Company on the other hand take the position that the subway should be treated as a unit and the whole cost divided in proportion to the usable length of the barrel of the subway appropriated to the respective railways.

No evidence was given by either party as to the relative importance of the traffic on the different lines and I must, therefore, assume that all the lines are of equal importance. I can quite easily believe that the apportionment of costs in such a case as this might depend a great deal upon the importance of the

lines running over the subway, but in the absence of such evidence it appears to me that the only fair and equitable method by which to apportion the cost is the method put forward by the Canadian Pacific Railway Company.

The theory that a distinction should be made in the apportionment of the cost of the barrel as distinguished from the approaches is based on the idea that if there were two separate subways each company would have to provide two approaches, and by reason of the fact that the two subways happen to be together in one subway each should pay half. This theory might work equitably in some cases, but I can easily imagine cases in which a division on this basis would be unfair to one of the parties. For example, an electric tramway parallels an important steam railway with numerous tracks. A division of costs on the basis of each company paying half of the cost of the approaches would obviously be unfair to the tram line. Again, in such a case, no subway would probably ever have been constructed but for the presence of the steam line. The apportionment of cost on such a basis would also involve many difficulties in segregating the costs of the approaches from the cost of the barrel of the subway. For example, excavations for the subway barrel would cost more per yard than the excavations for the approaches. Again, there is the difficulty of segregating the damages to property attributable to the approaches and those attributable to the barrel of the subway.

In the Brock avenue case to which we were referred, the Board apportioned the whole cost on a percentage basis.

In the Queen Street overhead bridge case, there were three railways involved, each of them having one track. The apportionment was made on the basis of the relative importance of the several lines and no distinction between the approaches and the bridge itself was made.

The cost of the three subways in question here will be apportioned between the two railways as follows:—

At Bloor street and Royce avenue in proportion to the length of the barrel of the subway appropriated to the use of each.

At St. Clair avenue the capital cost upon which the Canadian Pacific Railway Company shall pay interest is to be fixed in a similar manner.
June 15, 1933.

Commissioner Stoneman concurred.

ORDER No. 49982

In the matter of the joint application of the Canadian National and the Canadian Pacific Railway Companies for an Order apportioning the cost of constructing and maintaining the subways (a) under the tracks of the Galt Subdivision and the Toronto, Grey & Bruce Subdivision of the Canadian Pacific Railway Company and the Brampton Subdivision of the Canadian National Railways at Bloor Street, Toronto; (b) under the tracks of the Galt Subdivision and the Toronto, Grey & Bruce Subdivision of the Canadian Pacific Railway Company and the Brampton Subdivision of the Canadian National Railways on Royce Avenue, Toronto; and (c) under the tracks of the Brampton Subdivision of the Canadian National Railways and under the tracks of the Canadian Pacific Railway Company on St. Clair Avenue, Toronto,—as between the two Railway companies.

File No. 32453 and Case No. 1353.

FRIDAY, the 16th day of June, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*

J. A. STONEMAN, *Commissioner.*

Upon hearing the application at the sittings of the Board held in Toronto, June 9, 1933, in the presence of counsel for the Canadian Pacific and the Canadian National Railway Companies, and what was alleged,—

It is Ordered:

1. That the Canadian Pacific and the Canadian National Railway Companies' proportion of the cost of constructing and maintaining the said subways at Bloor street and Royce avenue, Toronto, be apportioned in proportion to the length of the barrel of the subway appropriated to the use of each.

2. That in connection with the Canadian Pacific Railway Company's proportion of the cost of constructing and maintaining the said subway at St. Clair avenue, Toronto, the capital cost upon which the Canadian Pacific Railway Company shall pay interest is to be fixed in a similar manner as provided by paragraph 1 hereof.

C. P. FULLERTON,
Chief Commissioner.

Consideration of the question of the apportionment of cost of construction of the Interchange Tracks between the Canadian Pacific and Canadian National Railways at North Battleford, Saskatchewan, reserved by Order of the Board No. 45838, dated November 26, 1930.

(File No. 6713.233)

JUDGMENT

FULLERTON, CHIEF COMMISSIONER:

This is an application to apportion the cost of construction of interchange tracks between the Canadian Pacific and the Canadian National Railway Companies at North Battleford. The Order authorizing construction, No. 45838 dated November 26, 1930, reserves the question of the cost.

A statement showing carload traffic interchanged during the period extending from January 26, 1931, to January 25, 1933, has been filed with the Board by the Canadian Pacific Railway Company and its correctness admitted by the Canadian National Railways. A study of this statement shows that the establishment of this interchange has resulted in loss of traffic to the Canadian National Railways with practically no compensating advantages.

The Canadian Pacific Railway Company will pay the whole cost of the construction of the interchange.

June 15, 1933.

Commissioner Stoneman concurred.

ORDER No. 49983

In the matter of the Order of the Board No. 45838, dated November 26, 1930, directing the Canadian Pacific Railway Company to construct interchange tracks between its railway and the tracks of the Canadian National Railways at North Battleford, Saskatchewan, and reserving for further consideration the question of the cost of construction.

File No. 6713.233.

FRIDAY, the 16th day of June, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*

J. A. STONEMAN, *Commissioner.*

Upon hearing the matter at the sittings of the Board held in North Battleford, October 8, 1931, in the presence of counsel for the railway companies, and what was alleged, the question to stand for one year from the opening of the interchange, and the companies to furnish the Board with statements of traffic and necessary information; and upon reading the written submissions filed, and the report and recommendation of the Assistant Chief Traffic Officer of the Board, concurred in by its Chief Engineer,—

It is Ordered: That the Canadian Pacific Railway Company be, and it is hereby, directed to bear and pay the whole cost of constructing and maintaining the said interchange tracks at North Battleford, Saskatchewan.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 49970

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.14.

THURSDAY, the 15th day of June, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*

S. J. MCLEAN, *Asst. Chief Commissioner.*

The Board Orders:

1. That the tolls published in Tariff C.R.C. No. 691, filed by the Temiscouata Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that, for the purpose of reimbursement, the Temiscouata Railway Company's proportion of tolls published in the said Tariff C.R.C. No. 691 are to be reported as shown in column 1 and normal tolls as shown in column 2, namely:—

Via Route 1	From Group A		From Group B		From Group C	
	Cents per 100 pounds					
To	*Column*		*Column*		*Column*	
	1	*2*	*1*	*2*	*1*	*2*
Crabtree, Que.	5	6½	7	9	5	6½
Cornwall, Ont.	5	6½	7	9	4	5
Donnacona, Que.	5	6½	7	9	5	6½
Grand Mere, Que.	5	6½	7	9	5	6½
Georgetown, Ont.	5	6½	7	9	4½	5½
Hawkesbury, Ont.	5	6½	7	9	5	6½
La Tuque, Que.	5	6½	7	9	–	–
Limoilou Junction, Que.	5	6½	7	9	4	5
Merritton, Ont.	5	6½	7	9	4½	5½
Ottawa, Ont.	5	6½	7	9	5½	7
Thorold, Ont.	5	6½	7	9	4½	5½
Shawinigan Falls, Que.	5	6½	7	9	5	6½
Windsor Mills, Que.	5	6½	7	9	4½	5½

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 49971

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.14.

Thursday, the 15th day of June, A.D. 1933.

Hon. C. P. Fullerton, K.C., *Chief Commissioner.*

S. J. McLean, *Asst. Chief Commissioner.*

The Board Orders:

1. That the toll published in Tariff C.R.C. No. 692, filed by the Temiscouata Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll for the purpose of reimbursement on traffic moving under the said Tariff C.R.C. No. 692 is 2½ cents per 100 pounds.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 49972

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.14.

THURSDAY, the 15th day of June, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*

S. J. MCLEAN, *Asst. Chief Commissioner.*

The Board Orders:

1. That the toll published in Tariff C.R.C. No. 693, filed by the Temiscouata Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll for the purpose of reimbursement on traffic moving under the said Tariff C.R.C. No. 693 is 4 cents per 100 pounds.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 49973

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.14.

THURSDAY, the 15th day of June, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*

S. J. MCLEAN, *Asst. Chief Commissioner.*

The Board Orders:

1. That the toll published in Tariff C.R.C. No. 694, filed by the Temiscouata Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll to be used for the purpose of reimbursement on traffic moving under the said Tariff C.R.C. No. 694 is 2½ cents per 100 pounds.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 49974

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.14.

THURSDAY, the 15th day of June, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Asst. Chief Commissioner.*

The Board Orders:

1. That the toll published in Tariff C.R.C. No. 695, filed by the Temiscouata Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll to be used for the purpose of reimbursement on traffic moving under the said Tariff C.R.C. No. 695 is 95 cents per cord.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 49975

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.14.

THURSDAY, the 15th day of June, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Asst. Chief Commissioner.*

The Board Orders:

1. That the toll published in Tariff C.R.C. No. 697, filed by the Temiscouata Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll to be used for the purpose of reimbursement on traffic moving under the said Tariff C.R.C. No. 697 is 4½ cents per 100 pounds.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 49976

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.14.

THURSDAY, the 15th day of June, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Asst. Chief Commissioner.*

The Board Orders:

1. That the tolls published in Tariff C.R.C. No. 699, filed by the Temiscouata Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that, for the purpose of reimbursement, the Temiscouata Railway Company's proportion of tolls published in the said Tariff C.R.C. No. 699 is to be reported at 6 cents per 100 pounds and of the normal tolls at 7½ cents per 100 pounds.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 49977

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.14.

THURSDAY, the 15th day of June, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Asst. Chief Commissioner.*

The Board Orders:

1. That the tolls published in Tariff C.R.C. No. 700, filed by the Temiscouata Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls to be used for the purpose of reimbursement on traffic moving under the said Tariff C.R.C. No. 700 are as follows:—

From	Rates in cents per 100 pounds
Edmundston, N.B.	39
Ste. Rose, Que.	32½
Notre Dame du Lac, Que.	29
Cabano, Que.	26
St. Louis du Ha Ha, Que.	25
St. Honore, Que.	22½

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 49978

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.14.

THURSDAY, the 15th day of June, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Asst. Chief Commissioner.*

The Board Orders:

1. That the toll published in Tariff C.R.C. No. 701, filed by the Temiscouata Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll to be used for the purpose of reimbursement on traffic moving under the said tariff C.R.C. No. 701 is 2½ cents per 100 pounds.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 49979

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.14.

THURSDAY, the 15th day of June, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Asst. Chief Commissioner.*

The Board Orders:

1. That the toll published in Tariff C.R.C. No. 702, filed by the Temiscouata Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll to be used for the purpose of reimbursement on traffic moving under the said Tariff C.R.C. No. 702 is 95 cents per cord.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 49980

In the matter of tariffs and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act

File No. 34822.14.

THURSDAY, the 15th day of June, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Asst. Chief Commissioner.*

The Board Orders:

1. That tolls published in Tariff C.R.C. No. 704, filed by the Temiscouata Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby approved subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that, for the purpose of reimbursement, the Temiscouata Railway Company's proportion of the tolls published in the said Tariff C.R.C. No. 704 is to be reported at 4 cents per 100 pounds and of the normal tolls at 5 cents per 100 pounds.

C. P. FULLERTON,
Chief Commissioner.

GENERAL ORDER No. 514

In the matter of the consideration of the question of proposed regulations governing the location near railway tracks of refineries or distilleries for the processing of gasoline.

File No. 28638.2

FRIDAY, the 9th day of June, A.D. 1933.

Hon. C. P. FULLERTON, K.C. *Chief Commissioner.*
G. A. STONE, *Commissioner.*

Upon reading the submissions filed on behalf of the British American Oil Company, Limited, Imperial Oil Limited, Shell Oil Company of Canada, Limited,

McColl-Frontenac Oil Company, Limited, Sun Oil Company, Limited, American Petroleum Institute, and the Bureau of Explosives; and upon the report and recommendation of the Chief Operating Officer of the Board,—

It is ordered: That General Order No. 441, dated May 4, 1927, prescribing regulations governing the location and operation of loading racks and unloading points for gasoline, naphtha, or any inflammable liquid for the observance of railway companies subject to the jurisdiction of the Board, be, and it is hereby, amended by adding at the end of paragraph 3 (*b*) thereof the words, "Refinery or distillery . . . 250 feet"; and by adding to the said paragraph 3 the following, namely:—

"(*d*) Where practicable, refineries or distilleries should be located on ground sloping away from railroad tracks. Refineries or distilleries must be surrounded by dykes of earth or concrete, or other suitable material, of sufficient capacity to hold all the contents of the tanks or other vessels, or of such nature and location that in the case of breakage or leakage the liquid will be diverted to points such that railroad property and passing trains will not be endangered.

"(*e*) Walls and floors of dykes or ditches adjacent to refinery or distillery plants must be kept clean and free of inflammable or other material."

C. P. FULLERTON,
Chief Commissioner.

GENERAL ORDER No. 513A

In the matter of the General Order of the Board No. 513, dated June 1, 1933.

File No. 496.43

FRIDAY, the 16th day of June, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*
Hon. T. C. NORRIS, *Commissioner.*
J. A. STONEMAN, *Commissioner.*
G. A. STONE, *Commissioner.*

Upon its appearing that through error the name of the Grand River Railway Company was omitted from the said General Order, and that the said company, jointly with the Lake Erie and Northern Railway Company, has duly filed the conditions printed on its forms of free transportation,—

It is ordered: That the said General Order No. 513, dated June 1, 1933, be, and it is hereby, amended by adding at the end thereof the words, "Grand River Railway Company."

S. J. McLEAN,
Assistant Chief Commissioner.

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DEC 4 1935

The Board of

Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

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This publication is issued fortnightly, on the 1st and 15th of each month. Annual subscription, $3.00; single numbers, 20 cents; in quantities, 25 per cent discount. Remittances should be made to the King's Printer, Ottawa, by postal money order, express order or accepted cheque. The use of currency for this purpose is contrary to the advice of the postal authorities and entails a measure of risk. Postage stamps, foreign money or uncertified cheques will not be accepted. No extra charge is made for postage on documents forwarded to points in Canada and in the United States, but cost of postage is added to the selling price when documents are mailed to other countries. Early application should be made for copies in quantities. Subscriptions should be sent, in every case, to the King's Printer, Ottawa.

Application of the Canadian National Railways for an Order of the Board (similar to the Board's Order No. 46191, in connection with the Winnipeg Street Subway in the City of Regina, Sask.), by which the County of Halton, the Township of Trafalgar and the Town of Oakville, Ont., shall be ordered to pay the Railway Company one half the balance still owing from the Railway Grade Crossing Fund, together with interest thereon at 5 per cent per annum from the date of expenditure, in the matter of the subway at Oakville, Ont., on the Canadian National Railways.

File 9437.170.

JUDGMENT

McLean, Assistant Chief Commissioner:

By order of the Board No. 45765, of November 13, 1930, provision was made directing the construction of a subway under the tracks of the Canadian National Railways, on the Seventh Line road in the town of Oakville, Ont. It was provided that 40 per cent of the cost of the construction of the subway and diversion was to be paid out of the Railway Grade Crossing Fund; 30 per cent by the Canadian National Railways; 20 per cent by the county of Halton; $4\frac{1}{4}$ per cent by the township of Trafalgar and $5\frac{3}{4}$ per cent by the town of Oakville. The cost of maintenance was to be borne and paid—30/60 by the railway company; 20/60 by the county of Halton; $5\frac{3}{4}$/60 by the town of Oakville and $4\frac{1}{4}$/60 by the township of Trafalgar. The work directed was undertaken with a view to aiding unemployment relief. The progress of the work was held up on account of lack of funds. On February 12, 1932, the work had not yet been commenced. The total estimated cost of the subway and diversion was $170,000, and 40 per cent of this amount, or $68,000 was payable by the Railway Grade Crossing Fund.

Under the above arrangement, 34 per cent of $68,000 was immediately available, as a pro rata payment, and an additional 11 per cent of this amount would became available after April 1, 1932, giving a total of $30,600.

By Order No. 48095 of February 2, 1932, provision was made for diversion of the Sixth Line road, it being provided that when the diversion was completed, the road in question was to be closed.

65961—1

Under date of May 21, 1932, the Board was written to by the railway enclosing a letter from Mr. W. A. Kingsland, General Manager, Canadian National Lines, dated Toronto, May 7, 1932, reading as follows:—

"Replying to your letter of May 5 regarding subway at Seventh Line, Oakville, Ontario.

"Plans were completed for this work in the summer of 1931. Preliminary trackwork was undertaken by the railroad, which meant the rearrangement of switches and yard tracks at Oakville, and also preparation of the diversion of the main line during construction work. Tenders were asked for and received. In the meantime there was some question with the municipalities with respect to drainage, and as this developed into a material change in the plans, work was not gone ahead with last fall, and finally the low bidder was informed that we would not proceed with the work as advertised.

"Recently the municipalities have again approached the railroad with respect to starting the work, and under date of May 3 we advised them as follows:—

'I understand that the Grade Crossing Fund administered by the Board of Railway Commissioners is so depleted that at present the Board could only authorize payment of about 46 per cent of its 40 per cent of the cost of the work. Under present conditions our Company is not in a position to finance the remainder of the Board's contribution. If, however, the municipalities of Oakville, Trafalgar and Halton can and will assume the balance of the Board's portion of the cost of the work we are prepared to proceed with the subway, it being the understanding that as moneys are received from the Board they will be turned over to the municipalities.'

"This outlines our position and we are still waiting a reply from them."

Following this, correspondence was taken up with the municipalities, referring them to Mr. Kingsland's letter, and asking them for the attitudes taken by them thereto, and stating the Board was desirous of knowing definitely whether the work was to go on or not, and pointing out if it was not to go on then the commitment made in connection with it could be utilized at some other point.

Under date of May 26, 1932, the Board was written to by Mr. Chisholm, the solicitor acting on behalf of a committee representing the municipalities in the matter. He stated that this committee was most desirous that the work should go on as soon as possible; that the municipalities were prepared to finance their portions of the cost; and that negotiations were on foot for the financing of the deficiency of the contribution of the Grade Crossing Fund.

Under date of August 18, 1932, the Board was written to by the solicitor for the railway referring to the discussions which had taken place with representatives of the municipalities, and stating, under existing conditions, necessity for the subway at Oakville was not pressing, and the railway believed that the township, county and town should accept the railway's proposition if they wished the work done.

The town of Oakville undertook, by resolution, to finance any deficiency in the amount to be paid out of the Grade Crossing Fund for the subway work until July 1, 1933. The clerk of the county of Halton was written to asking him to state definitely the position taken by the municipalities in the matter. The township of Trafalgar was written to in the same manner.

The offers of assistance from the municipalities had been based upon the idea that the need for such assistance would run out on July 1, 1933. They had, however, to be advised that the Grade Crossing Fund would not be in a position to repay the full amount before 1938. The amount spent on this work by the railway in preliminary work, such as surveys, digging test pits, moving tracks, grading, ballasting, etc., amounts to $10,082.85. Application was made by the railway company that the municipalities should be ordered to pay the railway company one-half of the balance still owing from the Grade Crossing Fund, together with interest thereon at five per cent per annum from the date of expenditure.

The situation may as well be faced frankly. In addition to the limitation of the moneys in the Grade Crossing Fund, the railway is not in a position to carry on any further at present. The Sixth Line road is protected by bell and wig-wag; the Seventh Line road is protected by gates. The Orders in existence provide for a closing of the Sixth Line road and a diversion to the Seventh Line. When the order issued, the situation was that if action had not been provided for in regard to the Sixth Line road, there would have been a subway, and at no very great distance therefrom a level crossing, which would not be a satisfactory arrangement. It was suggested by the railway company at the recent hearing in Toronto, that the Sixth Line road should be closed and diverted. The solicitor for the municipalities stated that he was taken by surprise, and so was not in a position to make any submissions. The diversion would cost about $16,000, and the railway is not in a position to participate in this cost at present.

As to the subway, I am of the opinion that work in connection with it should be postponed for three years.

There remains for consideration the question of contribution. As pointed out, the railway has spent a little over $10,000 in preliminary work. The Grade Crossing Fund will be chargeable with 40 per cent of this or $4,033.14. Of this amount there has been paid by the said fund $2,486.83, leaving a balance unpaid of $1,546.31, which, under the application, would have to be financed by the railway and the municipalities, the latter's share being one-half, or $773.15. In addition to this payment, the municipalities are required to pay, under the 30 per cent of the cost which the order places on them, the sum of $3,024.85.

The railway also applies for interest at the rate of 5 per cent on such amounts as are to be reimbursed to it from the date of expenditure to the date of payment. Interest has been found to be a legitimate factor in cost.

I think order should go accordingly.

Ottawa, June 20, 1933.

Commissioners Norris and Stone concurred.

ORDER No. 50036

In the matter of the application of the Canadian National Railways for an Order directing the County of Halton, the Township of Trafalgar, and the Town of Oakville, all in the Province of Ontario, to pay the company an amount equal to one-half of the balance still owing from the Railway Grade Crossing Fund, with interest thereon at five per cent per annum from the date of expenditure until the date of payment, in connection with the subway under the tracks of the said railway company on the Seventh Line Road in the Town of Oakville, authorized to be constructed under the Order of the Board No. 45765, dated November 13, 1930, as amended by Order No. 48095, dated February 2, 1932.

File No. 9437.170

MONDAY, the 26th day of June, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*
Hon. T. C. NORRIS, *Commissioner.*
J. A. STONEMAN, *Commissioner.*

Upon hearing the application at the sittings of the Board held in Toronto, May 3, 1933, in the presence of counsel for the railway company and the municipalities, and what was alleged; and upon reading the written submissions filed,—

It is ordered: That the sum of $773.15 (being one-half of the balance now owing from the Railway Grade Crossing Fund) be paid to the Canadian National Railways as follows, namely:—

County of Halton	$515.43
Town of Oakville	148 19
Township of Trafalgar	109 53

in connection with the said subway on the Seventh Line road in the town of Oakville and province of Ontario, with interest thereon at five per cent per annum from the date of expenditure to the date of payment to the railway company by the said municipalities: Provided that, as and when the Board shall be in a position to make the said payment out of the Railway Grade Crossing Fund, the municipalities shall be entitled to be repaid by the Board the said amount of $773.15.

C. P. FULLERTON,
Chief Commissioner.

In the matter of the Order of the Board No. 42618, dated May 14, 1929, as amended by Order No. 44201, dated the 17th day of January, 1930, respecting the reconstruction of the bridge over the Canadian National Railways on Sandwich street, in the Town of Walkerville, in the Province of Ontario;

And in the matter of the determination of the Chief Engineer of the Board, dated February 3, 1933, of certain questions;

And in the matter of the application of the Corporation of the Town of Walkerville for a final Order fixing the amount payable by each party in respect of the cost of the work and other incidental matters.

File 35394

JUDGMENT

MCLEAN, ASSISTANT CHIEF COMMISSIONER:

Before dealing with the statement of cost as now presented, reference may be made to the fact that the town of Walkerville, which did the work, agreed

that the Canadian National Railways' contribution should be limited to $60,000; and it further agreed that the town would absorb the difference between the sum of $60,000 and 55 per cent of the cost of the work. This percentage worked out at $108,617.34, so that, in addition to its 20 per cent, amounting to $39,497.21, the town of Walkerville had to bear the amount of $48,617.34.

The detailed statement of cost follows:—

Gosselin Construction Co. Ltd (General Contractor)..	$68,881 67	
Less amount included in amount for construction of new pavements and sidewalks..	5,667 00	
		$63,214 67
Canadian Bridge Co. Ltd. (Steel Contract)..		49,610 00
Walkerville Hydro-Electric System (Lighting Contract)..		2,460 87
Canadian National Railways track changes, etc..		4,677 71
Hydro-Electric Power Commission of Ontario (Street Railway Division)—		
(*a*) Temporary construction..		5,035 39
Interest thereon at 5½ per cent from July 1, 1930, to May 31, 1933		873 91
(*b*) Value of old tracks over bridge at time of construction, less salvage..		6,269 51
Interest thereon at 5½ per cent from March 1, 1930, to May 31, 1933..		1,224 56
(*c*) Repairs to retaining wall..		314 52
*(*d*) Damage to Victoria and Assumption tracks by reason of construction		4,852 00
Interest thereon at 5½ per cent from March 1, 1930, to May 31, 1933..		947 38

*(It appears from the evidence at the hearing at Windsor on May 31 that the residual value of the street car tracks at Victoria road and Assumption street amounted to $9,704, and the Sandwich, Windsor and Amherstburg Railway claimed one-half of this, or $4,852, as the decreased value of the tracks by reason of the removal of the turn-out on Sandwich street. On consideration, the Board is of opinion that this is a proper charge and should form part of the cost of the work. The Board's Engineer reports that the value placed on the tracks is reasonable, and the Board accepts this report).

Engineering fees, main contract..	7,199 57	
Less deduction for new pavements, etc..	170 00	
		$7,029 57
Inspection charges..	1,732 70	
Less deduction for new pavements, etc..	91 00	
		1,641 70
Land damages and costs paid to Chilver Land & Bldng. Co., Ltd., and Annie Walker as found by arbitrator..		17,584 35
Legal fees to town solicitor, in respect of arbitration of above damage claims..		2,000 00
Legal disbursements and expert evidence in respect of above arbitration..		1,348 75
Legal fees to town solicitor for general work..		1,505 00
Legal disbursements		302 30
Advertising charges..		35 55
Walkerville Water Company, Limited		89 80
Bell Telephone Company of Canada..		32 82
Walkerville Parks Commission (moving trees)..		11 25
Subsequent payment to general contractor for work subsequent to completion..		392 81
Subsequent engineering charges..		101 00
Miscellaneous		482 00
Value of old pavements, sidewalks, etc., destroyed by construction of bridge, payable to town of Walkerville:—		
(*a*) Old bridge proper..	1,913 65	
(*b*) West approach old bridge to west approach new bridge..	1,777 56	
		3,691 21
Interest thereon at 5½ per cent from March 1, 1930, to May 31, 1933..		723 00

(The residual value of the pavements and sidewalks destroyed by reason of the construction is a fair charge).

Cost of widening Sandwich street, payable to the town of Walkerville:—		
(*a*) West limit of Victoria road to end of west approach.. ..	1,622 16	
(*b*) End of approach to 70 feet westerly..	868 08	
(*c*) Engineering on above at 3 per cent..	185 44	
(*d*) Inspection charges on above..	91 00	
		2,766 68
Town of Walkerville office supervision and accounting..		3,000 00
(The item of "office supervision and accounting" amounting to $3,000 is reasonable).		
† Interest charges on payments made to May 31, 1933..		15,767 76
		$197,986 07
Deduct salvage from old structure to which Canadian National is entitled..		500 00
		$197,486 07

†(This is the interest chargeable on items where the interest is not specifically mentioned, same being charged at the rate of 5½ per cent per annum compounded monthly. This is the rate charged by the bank and appears to be fairly chargeable to the cost of the work).

The total cost of the work is $197,486.07. The amounts payable by each of the parties to the town of Walkerville to May 31, 1933, are as follows:—

Canadian National Railways..	$60,000 00
Town of Walkerville 20 per cent, amounting to..	39,497 21
Plus the difference between $60,000 payable by the Canadian National Railways and 55 per cent of the cost of the work. This percentage works out at..	48,617 34
City of Windsor..	29,622 91
Hydro-Electric Railways (Sandwich, Windsor and Amherstburg Railway)..	19,748 61

The order should also contain the provision that interest be paid at the rate of 5½ per cent per annum, compounded monthly, from May 31, 1933, to the date of payment.

June 21, 1933.

Commissioners Norris and Stoneman concurred.

ORDER No. 50037

In the matter of the Order of the Board No. 42618, dated May 14, 1929, as amended by Order No. 44201, dated January 17, 1930, authorizing the Canadian National Railways to reconstruct the bridge over their railway on Sandwich street, in the Town of Walkerville and Province of Ontario, and apportioning the cost of construction and maintenance thereof;

And in the matter of the application of the Corporation of the Town of Walkerville for a final Order fixing the amount payable by each party in respect of the cost of the work and other incidental matters.

File No. 35594

MONDAY, the 26th day of June, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*
Hon. T. C. NORRIS, *Commissioner.*
G. A. STONE, *Commissioner.*

Upon hearing the matter at the sittings of the Board held in Windsor, May 31, 1933, in the presence of counsel for the town of Walkerville, the Hydro-Electric Power Commission of Ontario, and the city of Windsor, and what was alleged; and upon the report of the Chief Engineer of the Board, and its appearing that the total cost of the said work is $197,486.07—

It is ordered:

1. That the amounts payable by each of the parties to the town of Walkerville in respect of the reconstruction of the bridge over the Canadian National Railways on Sandwich street, Walkerville, Ontario, to the 31st day of May, 1933, are as follows, namely:—

Canadian National Railways	$60,000 00
Town of Walkerville, 20 per cent	39,497 21
Plus the difference between $60,000 payable by the Canadian National Railways and 55 per cent of the cost of the work.	48,617 34
City of Windsor	29,622 91
Hydro-Electric Power Commission of Ontario (Sandwich, Windsor and Amherstburg Railway)	19,748 61

2. That interest on the said amounts at the rate of five and one-half per cent per annum, compounded monthly, be paid by the said parties to the town of Walkerville from the 31st day of May, 1933, to the date of payment.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 49984

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act:

File No. 34822.12

FRIDAY, the 16th day of June, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Asst. Chief Commissioner.*
G. A. STONE, *Commissioner.*

The Board Orders:

1. That the tolls published in Supplement No. 17 to Tariff C.R.C. No. E-4322, filed by the Canadian Pacific Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal rates for the purpose of reimbursement to apply on traffic moving under the said Supplement No. 17 to Tariff C.R.C. No. E-4322 are as follows, namely:—

Item 10A—	Mileage Rates in Cents per 100 Pounds
Over 125 to 150 miles	9
Over 150 to 175 miles	9½
Over 175 to 200 miles	10
Over 200 to 225 miles	10½
Over 225 to 250 miles	11
Over 250 to 275 miles	11
Over 275 to 300 miles	12
Over 300 to 350 miles	13
Over 350 to 400 miles	14
Over 400 to 450 miles	15
Over 450 to 500 miles	16
Over 500 to 550 miles	17
Over 550 to 600 miles	18
Over 600 to 650 miles	19
Over 650 to 700 miles	20
Over 700 to 750 miles	21

From	Specific Rates in Cents per 100 Pounds to Buckingham, P.Q.	Cap de la Madeleine and Trois Rivieres, P.Q.	Cornwall, Ont.	Grand'Mere, P.Q.
Saint John, N.B.	18	18	17	18½
Fairville, N.B. South Bay, N.B. Grand Bay, N.B.	18	18	17	18
Westfield Beach, N.B.	18	18	17	17½
Nerepis, N.B. Blagdon, N.B.	18	18	17	18
Welsford, N.B. Clarendon, N.B.	18	17	17	18
Wirral, N.B. Enniskillen, N.B. Hoyt, N.B.	17	17	17	18
Bailey, N.B. Fredericton Junction, N.B. Tracy, N.B.	17	17	16	18
Booth, N.B. Cork, N.B. Harvey, N.B. Prince William, N.B.	17	17	16	17
Magaguadavic, N.B.	17	16	16	17
McAdam, N.B.	16	16	16	17
Bay Shore, N.B.	18	18	17	18
West Saint John, N.B.	18	17	17	18
Rusagonis, N.B. Waasis, N.B.	17	17	17	18
Doak, N.B. Oborne, N.B. Morrison, N.B.	18	17	17	18
Fredericton, N.B.	18	17	17	16
Barber Dam, N.B.	17	16	16	17
Lawrence, N.B. Watt, N.B. Honeydale, N.B. Gilman, N.B. Moore's Mills, N.B. Maxwell, N.B. Milltown Junction, N.B. St. Stephen, N.B.	17	17	16	17
Milltown, N.B.	17	17	16	18
Dumbarton, N.B. Rolling Dam, N.B. Hewitt, N.B. Brunswick, N.B. Roix Road, N.B. Waweig, N.B. Bartlett, N.B.	17	17	16	17
Dougherty, N.B. Chamcook, N.B. St. Andrews, N.B.	17	17	16	18
Oak Bay, N.B. Ripley's, N.B. Gidden, N.B. McMinn, N.B. Dyer's, N.B. Bonny River, N.B.	17	17	16	17
St. George, N.B. Utopia, N.B.	17	17	17	18
Sherwood Siding, N.B.	18	17	17	18
Pennfield, N.B.	18	17	17	18
New River, N.B. Lepreaux, N.B. Musquash, N.B. Taylor's, N.B. Allan Cot, N.B. Spruce Lake, N.B.	18	18	17	18

	Specific Rates in Cents per 100 Pounds to			
	Buckingham, P.Q.	Cap de la Madeleine and Trois Rivieres, P.Q.	Cornwall, Ont.	Grand'Mere, P.Q.
Cottrell, N.B. Sugar Brook, N.B.	17	16	16	17
Deer Lake, N.B. Shogomoc, N.B. Canterbury, N.B. Marne, N.B. Scott, N.B. Benton, N.B.	17	17	16	17
Oak, N.B. Wickham, N.B. Debec, N.B.	17	17	16	18
Valley, N.B. Woodstock, N.B. Upper Woodstock, N.B.	17	17	17	18
Newburg, N.B. Tedlie, N.B. Nixon, N.B. Deep Creek, N.B.	18	17	17	18
Hartland, N.B. Hale, N.B. Peel, N.B. Stickney, N.B.	18	18	17	18
Florenceville, N.B. Bristol, N.B. Bath, N.B. Beechwood, N.B.	18	18	17	18
Upper Kent, N.B. River de Chute, N.B. Muniac, N.B. Kilburn, N.B.	18	18	17	19
Inman, N.B. Perth Junction, N.B. Andover, N.B.	18	18	18	19
Aroostook, N.B.	19	18	18	19
Morrill, N.B.	19	18	18	18
Limestone, N.B. to Argosy, N.B.	19	19	18	17
Grand Falls, N.B. Martin, N.B.	19	17	15½	13½
Cyr, N.B.	19	15½	15	13½
St. Leonards, N.B.	19	16	15	13½
Quisibis, N.B. to Green River, N.B.	19	16	16	12½
Fraser, N.B. St. Basil, N.B.	20	16	16	12½
Edmundston, N.B.	20	16	14½	12½
Elmwood, N.B. Green Road, N.B.	17	17	16	18
McKeena, N.B. Shewan, N.B.	18	17	17	18
Carr, N.B. to County Line, N.B. Nackawic, N.B. Millville, N.B. to Hainesville, N.B. Cahill, N.B.	18	18	17	18
Barton, N.B. to Hayne, N.B. Stoneridge, N.B.	18	18	17	19

	Specific Rates in Cents per 100 Pounds to			
	Buckingham, P.Q.	Cap de la Madeleine and Trois Rivieres, P.Q.	Cornwall, Ont.	Grand'Mere, P.Q.
Zealand, N.B. to Burtt's Corner, N.B.				
Keswick, N.B.	18	18	17	18
Clanfield, N.B. to North Devon, N.B.				
South Devon, N.B.	18	17	17	16
Caverhill, N.B. to Pinder, N.B.	18	18	17	18
Cullerton, N.B. to Otis, N.B.	18	18	17	19
Tobique Narrows, N.B.	18	18	18	19
Rowena, N.B.	19	18	18	18
Currie, N.B.				
Hillside, N.B.				
Red Rapids, N.B. to Beveridge, N.B.				
Reed's Island, N.B. to Three Brooks, N.B.	19	19	18	19
Wapske, N.B. to Arbuckle, N.B.				
Plaster Rock, N.B.	19	17	17	14
Tinker, N.B.	19	18	18	19
Marysville Junction, N.B.	..	18½	18½	16
Barker, N.B. to Ripples, N.B.	..	21	20	..
McGill, N.B. to Minto, N.B.	..	21	21	..
Marysville, N.B.	..	18½	18½	16
Newcastle Bridge, N.B.				
Midland, N.B. to Iron Bound Cove, N.B.	..	21	21	..
Chipman, N.B.	..	18½	18½	16
Pennlyn, N.B. to Cumberland Bay, N.B.				
Young's Cove Road, N.B. to Annidale, N.B.	..	22	21	..
Scotch Settlement, N.B.				
Belleisle, N.B.				
Norton, N.B.	..	22	21	18

From	Specific Rates in Cents per 100 Pounds to Hull West, P.Q., and Ottawa, Ont.	Joliette, P.Q.	Lachute, P.Q.	Megantic, P.Q.
Saint John, N.B..				
Fairville, N.B..	18	17	17	13
South Bay, N.B..				
Grand Bay, N.B..				
Westfield Beach, N.B..				
Nerepis, N.B..	18	17	17	12
Blagdon, N.B..				
Welsford, N.B..				
Clarendon, N.B..	18	17	16	12
Wirral, N.B..				
Enniskillen, N.B..	18	16	16	11½
Hoyt, N.B..				
Bailey, N.B..				
Fredericton Junction, N.B..				
Tracy, N.B..				
Rooth, N.B..	17	16	16	11½
Cork, N.B..				
Harvey, N.B..				
Prince William, N.B..				
Magaguadavic, N.B..	17	16	15	11½
McAdam, N.B..	17	15	15	10½
Bay Shore, N.B..				
West Saint John, N.B..	18	17	17	13
Rusagonis, N.B..				
Waasis, N.B..	18	16	16	11½
Doak, N.B..				
Oborne, N.B..				
Morrison, N.B..	18	17	16	12
Fredericton, N.B..				
Barber Dam, N.B..	17	16	15	11½
Lawrence, N.B..				
Watt, N.B..				
Honeydale, N.B..				
Gilman, N.B..				
Moore's Mills, N.B..				
Maxwell, N.B..				
Milltown Junction, N.B..	18	18	16	11½
St. Stephen, N.B..				
Milltown, N.B..				
Dumbarton, N.B..				
Rolling Dam, N.B..				
Hewitt, N.B..				
Brunswick, N.B..				
Roix Road, N.B..				
Waweig, N.B..				
Bartlett, N.B..				
Dougherty, N.B..				
Chamcook, N.B..	17	16	16	11½
St. Andrews, N.B..				
Oak Bay, N.B..				
Ripley's, N.B..				
Gidden, N.B..				
McMinn, N.B..				
Dyer's, N.B..				
Bonny River, N.B..	17	16	16	12
St. George, N.B..				
Utopia, N.B..	18	16	16	12
Sherwood Siding, N.B..	18	17	16	12
Pennfield, N.B..	18	17	16	12
New River, N.B..				
Lepreaux, N.B..	18	17	17	12
Musquash, N.B..				
Taylor's, N.B..				
Allan Cot, N.B..	18	17	17	13
Spruce Lake, N.B..				

	Specific Rates in Cents per 100 Pounds to			
	Hull West, P.Q., and Ottawa, Ont.	Joliette, P.Q.	Lachute, P.Q.	Megantic, P.Q.
Cottrell, N.B. Sugar Brook, N.B.	17	16	15	11½
Deer Lake, N.B. Shogomoc, N.B. Canterbury, N.B. Marne, N.B. Scott, N.B. Benton, N.B. Oak, N.B. Wickham, N.B. Debec, N.B.	17	16	16	11½
Valley, N.B. Woodstock, N.B.	18	16	16	11½
Upper Woodstock, N.B. Newburg, N.B. Tedlie, N.B. Nixon, N.B. Deep Creek, N.B. Hartland, N.B.	18	17	16	12
Hale, N.B. Peel, N.B. Stickney, N.B.	18	17	17	12
Florenceville, N.B.	18	17	17	12
Bristol, N.B. Bath, N.B. Beechwood, N.B. Upper Kent, N.B. River de Chute, N.B. Muniac, N.B. Kilburn, N.B.	18	17	17	13
Inman, N.B. Perth Junction, N.B. Andover, N.B.	19	17	17	13
Aroostook, N.B. Morrill, N.B.	19	18	17	13
Limestone, N.B. to Argosy, N.B.	19	18	18	13
Grand Falls, N.B.	17	18	16	13
Martin, N.B.	17	18	16	14
Cyr, N.B. St. Leonards, N.B. Quisibis, N.B. to Green River, N.B. Fraser, N.B.	17	18	15	14
St. Basil, N.B. Edmundston, N.B.	16	18	15	14
Elmwood, N.B. Green Road, N.B.	17	16	16	11½
McKenna, N.B. Shewan, N.B.	18	17	16	12
Carr, N.B. to County Line, N.B. Nackawic, N.B. Millville, N.B. to Hainesville, N.B.	18	17	17	12

	Specific Rates in Cents per 100 Pounds to			
	Hull West, P.Q., and Ottawa, Ont.	Joliette, P.Q.	Lachute, P.Q.	Megantic, P.Q.
Cahill, N.B..				
Barton, N.B..				
to				
Hayne, N.B..				
Stoneridge, N.B..	18	17	17	13
Zealand, N.B..				
to				
Burtt's Corner, N.B..				
Keswick, N.B..				
Clanfield, N.B..				
to	18	17	17	12
North Devon, N.B..				
South Devon, N.B..				
Caverhill, N.B..				
to				
Pinder, N.B..				
Cullerton, N.B..	18	17	17	13
to				
Otis, N.B..				
Tobique Narrows, N.B..	19	18	17	13
Rowena, N.B..				
Currie, N.B..	19	18	17	13
Hillside, N.B..				
Red Rapids, N.B..				
to				
Beveridge, N.B..				
Reed's Island, N.B..				
to	19	18	18	13
Three Brooks, N.B..				
Wapske, N.B..				
to				
Arbuckle, N.B..				
Plaster Rock, N.B..	18	18	15½	13
Tinker, N.B..	19	18	17	13
Marysville Junction, N.B.. ..	18	..	17	13
Barker, N.B..				
to				
Ripples, N.B..				
McGill, N.B..	..	..	..	..
to				
Minto, N.B..				
Marysville, N.B..	19½	..	17½	..
Newcastle Bridge, N.B..				
Midland, N.B..				
to	..	..	..	..
Iron Bound Cove, N.B..				
Chipman, N.B..	19½	..	17½	..
Pennlyn, N.B..				
to				
Cumberland Bay, N.B..				
Young's Cove Road..				
to	..	..	..	..
Annidale, N.B..				
Scotch Settlement..				
Belleisle, N.B..				
Norton, N.B..	22	..	21	..

Specific Rates in Cents per 100 Pounds to

From	Mont Rolland, P.Q.	Pont Rouge, P.Q.	Portneuf, P.Q.	St. Jerome, P.Q.
Saint John, N.B. Fairville, N.B. South Bay, N.B.	17	19	19	17
Grand Bay, N.B. Westfield Beach, N.B.	17	19	19	16
Nerepis, N.B. Blagdon, N.B.	17	19	18	16
Welsford, N.B.	17	18	18	16
Clarendon, N.B. Wirral, N.B. Enniskillen, N.B. Hoyt, N.B. Bailey, N.B. Fredericton Junction, N.B. Tracy, N.B. Rooth, N.B. Cork, N.B.	16	18	18	16
Harvey, N.B.	16	18	17	13
Prince William, N.B.	16	18	17	15
Magaguadavic, N.B.	16	17	17	15
McAdam, N.B.	15	17	17	15
Bay Shore, N.B. West Saint John, N.B.	17	19	19	17
Rusagonis, N.B. Waasis, N.B. Doak, N.B. Oborne, N.B.	17	18	17½	16
Morrison, N.B. Fredericton, N.B.	17	19	18	16
Barber Dam, N.B.	15	17	17	15
Lawrence, N.B. Watt, N.B. Honeydale, N.B.	16	18	17	15
Gilman, N.B. Moore's Mills, N.B. Maxwell, N.B. Milltown Junction, N.B. St. Stephen, N.B. Milltown, N.B.	16	18	18	16
Dumbarton, N.B.	16	18	17	15
Rolling Dam, N.B. Hewitt, N.B.	16	18	18	15
Brunswick, N.B. Roix Road, N.B. Waweig, N.B. Bartlett, N.B. Dougherty, N.B. Chamcook, N.B. St. Andrews, N.B. Oak Bay, N.B. Ripley's N.B. Gidden, N.B. McMinn, N.B. Dyer's N.B. Bonny River, N.B. St. George, N.B. Utopia, N.B. Sherwood Siding, N.B.	16	18	18	16
Pennfield, N.B.	17	18	18	16
New River, N.B. Lepreaux, N.B.	17	19	18	16
Musquash, N.B. Taylor's, N.B. Allan Cot, N.B. Spruce Lake, N.B.	17	19	19	17
Cottrell, N.B.	15	17	17	15
Sugar Brook, N.B.	16	17	17	15

	Specific Rates in Cents per 100 Pounds to Mont Rolland, P.Q.	Pont Rouge, P.Q.	Portneuf, P.Q.	St. Jerome, P.Q.
Deer Lake, N.B. Shogomoc, N.B.	16	18	17	15
Canterbury, N.B. Marne, N.B.	16	18	18	15
Scott, N.B. Benton, N.B. Oak, N.B. Wickham, N.B. Debec, N.B. Valley, N.B. Woodstock, N.B. Upper Woodstock, N.B. Newburg, N.B.	16	18	18	16
Tedlie, N.B. Nixon, N.B.	17	18	18	16
Deep Creek, N.B. Hartland, N.B. Hale, N.B. Peel, N.B.	17	19	18	16
Stickney, N.B.	17	19	19	17
Florenceville, N.B. Bristol, N.B. Bath, N.B. Beechwood, N.B. Upper Kent, N.B. River de Chute, N.B. Muniac, N.B. Kilburn, N.B. Inman, N.B. Perth Junction, N.B. Andover, N.B. Aroostook, N.B.	17	19	19	17
Morrill, N.B.	18	19	19	17
Limestone, N.B. to Argosy, N.B.	18	20	19	17
Grand Falls, N.B.	18	20	20	17
Martin, N.B. Cyr, N.B. St. Leonards, N.B. Quisibis, N.B. to Green River, N.B. Fraser, N.B. St. Basil, N.B.	18	20	20	18
Edmundston, N.B.	18	21	20	18
Elmwood, N.B. Green Road, N.B. McKenna, N.B.	16	18	18	16
Shewan, N.B.	17	19	18	16
Carr, N.B. to County Line, N.B.	17	19	18	16
Nackawic, N.B.	17	19	19	16
Millville, N.B. to Hainesville, N.B. Cahill, N.B. Barton, N.B. to Hayne, N.B. Stoneridge, N.B. Zealand, N.B. Burtt's Corner, N.B. Keswick, N.B.	17	19	19	17

From	Specific Rates in Cents per 100 Pounds to Mont Rolland, P.Q.	Pont Rouge, P.Q.	Portneuf, P.Q.	St. Jerome, P.Q.
Clanfield, N.B. to North Devon, N.B. / South Devon, N.B.	17	19	18	16
Caverhill, N.B. to Pinder, N.B. / Cullerton, N.B. to Otis, N.B. / Tobique Narrows, N.B. / Rowena, N.B.	17	19	19	17
Currie, N.B.	18	19	19	17
Hillside, N.B. / Red Rapids, N.B. to Beveridge, N.B.	18	20	19	17
Reed's Island, N.B. to Three Brooks, N.B.	18	20	20	17
Wapske, N.B. to Arbuckle, N.B.	18	20	20	18
Plaster Rock, N.B.	18	20	20	18
Tinker, N.B.	17	19	19	17

From	Specific Rates in Cents per 100 Pounds to Windsor Mills, P.Q.	Merritton and Thorold, Ont.
Saint John, N.B. / Fairville, N.B. / South Bay, N.B. / Grand Bay, N.B. / Westfield Beach, N.B. / Nerepis, N.B. / Blagdon, N.B. / Welsford, N.B. / Clarendon, N.B. / Wirral, N.B. / Enniskillen, N.B.	15	27
Hoyt, N.B.	15	26
Bailey, N.B. / Fredericton Junction, N.B. / Tracy, N.B. / Rooth, N.B. / Cork, N.B. / Harvey, N.B. / Prince William, N.B. / Magaguadavic, N.B. / McAdam, N.B.	14	26
Bay Shore, N.B. / West Saint John, N.B. / Rusagonis, N.B. / Waasis, N.B. / Doak, N.B. / Oborne, N.B. / Morrison, N.B.	15	27
Fredericton, N.B.	15½	25½

	Specific Rates in Cents per 100 Pounds to Windsor Mills, P.Q.	Merritton and Thorold, Ont.
Barber Dam, N.B..		
Lawrence. N.B..		
Watt, N.B..		
Honeydale, N.B..		
Gilman, N.B..		
Moore's Mills, N.B..		
Maxwell, N.B..		
Milltown Junction, N.B.. ..		
St. Stephen, N.B..		
Milltown, N.B..		
Dumbarton, N.B..		
Rolling Dam, N.B..		
Hewitt, N.B..		
Brunswick, N.B..	14	26
Roix Road, N.B..		
Waweig, N.B..		
Bartlett, N.B..		
Dougherty, N.B..		
Chamcook, N.B..		
St. Andrews, N.B..		
Oak Bay, N.B..		
Ripley's N.B..		
Gidden, N.B..		
McMinn, N.B..		
Dyer's, N.B..		
Bonny River, N.B..		
St. George, N.B..	15	26
Utopia, N.B..		
Sherwood Siding, N.B..	15	27
Pennfield, N.B..		
New River, N.B..		
Lepreaux, N.B..		
Musquash, N.B..	15	27
Taylor's, N.B..		
Allan Cot, N.B..		
Spruce Lake, N.B..		
Cottrell, N.B..		
Sugar Brook, N.B..		
Deer Lake, N.B..		
Shogomoc, N.B..		
Canterbury, N.B..		
Marne, N.B..	14	26
Scott, N.B..		
Benton, N.B..		
Oak, N.B..		
Wickham, N.B..		
Debec, N.B..		
Valley, N.B..		
Woodstock, N.B..	15	26½
Upper Woodstock, N.B..		
Newburg, N.B..		
Tedlie, N.B..		
Nixon, N.B..		
Deep Creek, N.B..	15	27
Hartland, N.B..		
Hale, N.B..		
Peel, N.B..		
Stickney, N.B..		
Florenceville, N.B..		
Bristol, N.B..		
Bath, N.B..		
Beechwood, N.B..		
Upper Kent, N.B..	15	27
River de Chute, N.B..		
Muniac, N.B..		
Kilburn, N.B..		
Inman, N.B..	16	27
Perth Junction, N.B..		
Andover, N.B..		
Aroostook, N.B..	16	28
Morrill, N.B..		

	Specific Rates in Cents per 100 Pounds to Windsor Mills, P.Q.	Specific Rates in Cents per 100 Pounds to Merritton and Thorold, Ont.
Limestone, N.B. to Argosy, N.B.	16	27
Grand Falls, N.B. Martin, N.B. Cyr, N.B. St. Leonards, N.B.	13½	23
Quisibis, N.B. to Green River, N.B. Fraser, N.B. St. Basil, N.B. Edmundston, N.B.	13	22
Elmwood, N.B.	14	26
Green Road, N.B.	15	26
McKenna, N.B. Shewan, N.B.	15	27
Carr, N.B. to County Line, N.B. Nackawic, N.B. Millville, N.B. to Hainesville, N.B. Cahill, N.B. Barton, N.B. to Hayne, N.B. Stoneridge, N.B. Zealand, N.B. Burtt's Corner, N.B. Keswick, N.B. Clanfield, N.B. to North Devon, N.B.	15	27
South Devon, N.B.	15½	25½
Caverhill, N.B. to Pinder, N.B. Cullerton, N.B. to Otis, N.B.	15	27
Tobique Narrows, N.B. Rowena, N.B. Currie, N.B. Hillside, N.B. Red Rapids, N.B. to Beveridge, N.B. Reed's Island, N.B. to Three Brooks, N.B. Wapske, N.B. to Arbuckle, N.B.	16	28
Plaster Rock, N.B.	14½	23
Tinker, N.B.	16	28
Marysville Junction, N.B.	16½	25½
Barker, N.B. to Ripples, N.B.	18	27
McGill, N.B. to Minto, N.B.	19	27
Marysville, N.B.	16½	25½
Newcastle Bridge, N.B.	19	27

	Specific Rates in Cents per 100 Pounds to Windsor Mills, P.Q.	Specific Rates in Cents per 100 Pounds to Merritton and Thorold, Ont.
Midland, N.B. to Iron Bound Cove, N.B.	19	28
Chipman, N.B.	15½	25
Pennlyn, N.B. to Cumberland Bay, N.B.		
Young's Cove Road, N.B. to Annidale, N.B.	19	28
Scotch Settlement, N.B.		
Belleisle, N.B.	20	28
Norton, N.B.	19½	27½

From	Specific Rates in Cents per 100 Pounds to Shawinigan Falls, P.Q.	Sturgeon Falls, Ont.	Temiskaming, P.Q.
Saint John, N.B.			
Fairville, N.B.			
South Bay, N.B.			
Grand Bay, N.B.	18	23	23
Westfield Beach, N.B.			
Nerepis, N.B.			
Blagdon, N.B.			
Welsford, N.B.			
Clarendon, N.B.			
Wirral, N.B.			
Enniskillen, N.B.	18	23	22
Hoyt, N.B.			
Bailey, N.B.			
Fredericton Junction, N.B.			
Tracy, N.B.	17	23	22
Rooth, N.B.			
Cork, N.B.			
Harvey, N.B.	17	22	22
Prince William, N.B.			
Magaguadavic, N.B.			
McAdam, N.B.	17	22	21
Bay Shore, N.B.			
West Saint John, N.B.	18	24	23
Rusagonis, N.B.			
Wassis, N.B.	18	23	22
Doak, N.B.			
Oborne, N.B.			
Morrison, N.B.	18	23	23
Fredericton, N.B.	16	23	23
Barber Dam, N.B.	17	22	21
Lawrence, N.B.			
Watt, N.B.			
Honeydale, N.B.	17	22	22
Gilman, N.B.			
Moore's Mill's, N.B.			
Maxwell, N.B.			
Milltown Junction, N.B.			
St. Stephen, N.B.	17	23	22
Milltown, N.B.			
Dumbarton, N.B.			
Rolling Dam, N.B.			
Hewitt, N.B.	17	22	22
Brunswick, N.B.			
Roix Road, N.B.			

	Specific Rates in Cents per 100 Pounds to Shawinigan Falls, P.Q.	Sturgeon Falls, Ont.	Temiskaming, P.Q.
Waweig, N.B. Bartlett, N.B. Dougherty, N.B. Chamcook, N.B. St. Andrews, N.B. Oak Bay, N.B. Ripley's, N.B.	17	23	22
Gidden, N.B. McMinn, N.B.	17	22	22
Dyer's, N.B. Bonny River, N.B.	17	23	22
St. George, N.B. Utopia, N.B. Sherwood Siding, N.B.	18	23	22
Pennfield, N.B.	18	23	22
New River, N.B. Lepreaux, N.B. Musquash, N.B.	18	23	23
Taylor's, N.B. Allan Cot, N.B. Spruce Lake, N.B.	18	24	23
Cottrell, N.B.	17	22	21
Sugar Brook, N.B. Deer Lake, N.B. Shogomoc, N.B. Canterbury, N.B. Marne, N.B. Scott, N.B.	17	22	22
Benton, N.B. Oak, N.B. Wickham, N.B. Debec, N.B.	17	23	22
Valley, N.B. Woodstock, N.B. Upper Woodstock, N.B. Newburg, N.B. Tedlie, N.B.	18	23	22
Nixon, N.B. Deep Creek, N.B. Hartland, N.B. Hale, N.B. Peel, N.B. Stickney, N.B.	18	23	23
Florenceville, N.B.	18	23	23
Bristol, N.B. Bath, N.B. Beechwood, N.B. Upper Kent, N.B. River de Chute, N.B.	18	24	23
Muniac, N.B. Kilburn, N.B. Inman, N.B. Perth Junction, N.B. Andover, N.B. Aroostook, N.B.	19	24	23
Morrill, N.B.	18	24	23
Limestone, N.B. to Argosy, N.B.	17	24	24
Grand Falls, N.B.	13½	24	24
Martin, N.B. Cyr, N.B. St. Leonards, N.B.	13½	25	24

	Specific Rates in Cents per 100 Pounds to Shawinigan Falls, P.Q.	Sturgeon Falls, Ont.	Temiskaming, P.Q.
Quisibis, N.B. to Green River, N.B. Fraser, N.B. St. Basil, N.B.	12½	25	24
Edmundston, N.B.	12½	25	25
Elmwood, N.B. Green Road, N.B. McKenna, N.B.	18	23	22
Shewan, N.B.	18	23	23
Carr, N.B. to County Line, N.B. Nackawic, N.B. Millville, N.B. to Hainesville, N.B.	18	25	23
Cahill, N.B. Barton, N.B. to Hayne, N.B. Stoneridge, N.B. Zealand, N.B. to Burtt's Corner, N.B.	18	24	23
Keswick, N.B. Clanfield, N.B. to North Devon, N.B.	18	23	23
South Devon, N.B.	16	23	23
Caverhill, N.B. to Pinder, N.B. Cullerton, N.B. to Otis, N.B.	18	24	23
Tobique Narrows, N.B. Rowena, N.B. Currie, N.B.	19	24	23
Hillside, N.B. Red Rapids, N.B. to Beveridge, N.B.	19	24	24
Reed's Island, N.B. to Three Brooks, N.B. Wapske, N.B. to Arbuckle, N.B.	18½	24	24
Plaster Rock, N.B.	14	24	24
Tinker, N.B.	19	24	23
Marysville Junction, N.B.	16	..	..
Marysville, N.B.	16	..	..
Chipman, N.B.	16	..	..
Norton, N.B.	18½	..	..

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER NO. 49994

In the matter of the application of the Ottawa Electric Railway Company, hereinafter called the "Applicant Company," under Section 334 of the Railway Act, for approval of its Standard Passenger Tariff C.R.C. No. 19, cancelling C.R.C. No. 14, on file with the Board under file No. 6949.2.

WEDNESDAY, the 21st day of June, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*
Hon. T. C. NORRIS, *Commissioner.*
J. A. STONEMAN, *Commissioner.*
G. A. STONE, *Commissioner.*

Upon the report and recommendation of the Assistant Chief Traffic Officer of the Board,—

It is Ordered: That the applicant company's said Standard Passenger Tariff C.R.C. No. 19, canceling C.R.C. No. 14, on file with the Board under file No. 6949.2, be, and it is hereby, approved; the said tariff, with a reference to this Order, to be published in at least two consecutive weekly issues of the *Canada Gazette.*

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER NO. 50007

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.8

WEDNESDAY, the 21st day of June, A.D. 1933.

S. J. MCLEAN, *Assistant Chief Commissioner.*
G. A. STONE, *Commissioner.*

The Board orders:

1. That the toll published in Tariffs C.R.C. No. 43 and No. 44, filed by the Sydney and Louisburg Railway Company under Section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the board hereby certifies that the normal toll for the purpose of reimbursement on traffic carried under the said tariffs C.R.C. No. 43 and No. 44 is 9½ cents per 100 pounds.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 50008

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.8

WEDNESDAY, the 21st day of June, A.D. 1933.

S. J. MCLEAN, *Assistant Chief Commissioner.*
G. A. STONE, *Commissioner.*

The Board orders:

1. That the toll published in Tariff C.R.C. No. 45, filed by the Sydney and Louisburg Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll for the purpose of reimbursement on traffic carried under the said Tariff C.R.C. No. 45 is 12½ cents per 100 pounds.

S. J. MCLEAN,
Assistant Chief Commissioner.

ORDER No. 50009

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.12

WEDNESDAY, the 21st day of June, A.D. 1933.

S. J. MCLEAN, *Assistant Chief Commissioner.*
G. A. STONE, *Commissioner.*

The Board orders:

1. That the toll published from Fairville, New Brunswick, to Stanbridge, Quebec, in Supplement No. 6 to Tariff C.R.C. No. E-4304, filed by the Canadian Pacific Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll for the purpose of reimbursement on traffic carried under the said Supplement No. 6 to Tariff C.R.C. No. E-4304, is 24 cents per 100 pounds.

S. J. MCLEAN,
Assistant Chief Commissioner.

ORDER No. 50010

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.12

WEDNESDAY, the 21st day of June, A.D. 1933.

S. J. MCLEAN, *Assistant Chief Commissioner.*
G. A. STONE, *Commissioner.*

The Board orders:

1. That the tolls published in Supplement No. 20 to Tariff C.R.C. No. E-4322, filed by the Canadian Pacific Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls which but for the said Act would have been effective in lieu of those published in the said Supplement No. 20 to Tariff C.R.C. No. E-4322, approved herein, are as follows:—

Section 2.—From Plaster Rock, N.B., the tolls published from Group B of the Canadian Pacific Railway Company's Tariff C.R.C. No. E-4203, with the following exceptions:—

To	Rates in cents per 100 pounds
Index 2226, Oil Springs, Ont.	36
Index 2228, Eddy's, Ont.	36
Index 2450, Quebec, Que.	21

Section 4.—To Fairville, N.B.

From	
Index 193, Newburg, N.B. to Index 202, Bristol, N.B.	7½
Index 203, Bath, N.B. to Index 211, Andover, N.B.	8½
Index 212, Aroostook, N.B. to Index 220, Grand Falls, N.B.	9½
Index 221, Martin, N.B. to Index 232A, Fraser, N.B.	10
Index 233, St. Basil, N.B.	11
Index 234, Edmundston, N.B.	11
Index 273, Tobique, N.B. Narrows, N.B.	8½
Index 274, Rowena, N.B. to Index 289, Tinker, N.B.	9½

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 50011

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.12

WEDNESDAY, the 21st day of June, A.D. 1933.

S. J. McLEAN, *Assistant Chief Commissioner.*
G. A. STONE, *Commissioner.*

The Board orders:

1. That the toll published in item 190 of Supplement No. 21 to Tariff C.R.C. No. E-4322, filed by the Canadian Pacific Railway Company under section 9 of the MaritimeFreight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll which but for the said Act would have been effective in lieu of that published in the said item 190 of Supplement No. 21 to Tariff C.R.C. No. E-4322, approved herein, is 33½ cents per 100 pounds.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 50012

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.12

WEDNESDAY, the 21st day of June, A.D. 1933.

S. J. MCLEAN, *Assistant Chief Commissioner.*
G. A. STONE, *Commissioner.*

The Board orders:

1. That the tolls published in Supplement No. 4 to Tariff C.R.C. No. E-4485, filed by the Canadian Pacific Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls for the purpose of reimbursement on traffic carried under the said Supplement No. 4 to Tariff C.R.C. No. E-4485, are as follows:—

To	Rates in cents per 100 pounds From Group 1	From Group 2
Rouyn, Que.	71¼	51½
Noranda, Que.	51½	

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 50013

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.12

WEDNESDAY, the 21st day of June, A.D. 1933.

S. J. MCLEAN, *Assistant Chief Commissioner.*
G. A. STONE, *Commissioner.*

The Board orders:

1. That the toll published in item No. 55 of Supplement No. 28 to Tariff C.R.C. No. E-4572, filed by the Canadian Pacific Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll for the purpose of reimbursement on traffic carried under the said item No. 55 of Supplement No. 28 to Tariff C.R.C. No. E-4572 is 17½ cents per 100 pounds.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDED No. 50014

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act

File No. 34822.12

WEDNESDAY, the 21st day of June, A.D. 1933.

S. J. MCLEAN, *Assistant Chief Commissioner.*
G. A. STONE, *Commissioner.*

The Board orders:

1. That the tolls published in items numbered 140, 150, 260, 380, 1330, and 1370 of Tariff C.R.C. No. E-4632, filed by the Canadian Pacific Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls for the purpose of reimbursement on traffic carried under the said Tariff C.R.C. No. E-4632 are as follows:—

		Rates in cents per 100 pounds
Item 140		17½
Item 150	Local	62½
	Furtherance	44½
Item 260 to		
Montreal, Que.		29
Toronto, Ont.		33
Item 380		18
Item 1330		9

Item 1370 to	Minimum 60,000 lbs.	Maximum 80,000 lbs.
Belleville, Ont.	34	31½
Brantford, Ont.	36	33½
Brockville, Ont.	33	31
Cornwall, Ont.	33	31
Fort William, Ont., L. & R.	37	35
Hamilton, Ont.	33	31
Kingston, Ont.	32½	30½
Levis, Que.	31½	27½

	Rates in cents per 100 pounds Minimum 60,000 lbs.	Maximum 80,000 lbs.
To		
Lindsay, Ont.	40	38
London, Ont.	36½	34½
Montreal, Que.	30½	25
Oshawa, Ont.	33½	31
Ottawa, Ont.	37½	35½
Peterboro, Ont.	40	37½
Port Arthur, Ont. L. & R.	37	35
Quebec, Que.	30½	27
Riviere du Loup, Que.	30	..
St. Catharines, Ont.	33	31
Sarnia, Ont.	36½	34
Sault Ste. Marie, Ont.	36	34
Sorel, Que.	27½	23
Thorold, Ont.	33	31
Toronto, Ont.	33½	31
Trois Rivieres, Que.	31	26
West Fort William, Ont. L. & R.	37	35
Windsor, Ont.	36½	34

	Minimum 30,000 lbs.
Riviere du Loup, Que.	37½
Smiths Falls, Ont.	41

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 50015

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act

File No. 34822.12

WEDNESDAY, the 21st day of June, A.D. 1933.

S. J. MCLEAN, *Assistant Chief Commissioner.*
G. A. STONE, *Commissioner.*

The Board orders:

1. That the tolls published in item No. 260A of Supplement No. 3 to Tariff C.R.C. No. E-4632, filed by the Canadian Pacific Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls for the purpose of reimbursement on traffic carried under the said item No. 260A of Supplement No. 3 to Tariff C.R.C. No. E-4632 are as follows:—

To	Rates in cents per 100 pounds
Belleville, Ont.	33
Brockville, Ont.	34½
Hamilton, Ont.	34
Kingston, Ont.	34
Port Colborne, Ont.	34½
Windsor, Ont.	41½

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 50016

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act

File No. 34822.12

WEDNESDAY, the 21st day of June, A.D. 1933.

S. J. MCLEAN, *Assistant Chief Commissioner.*
G. A. STONE, *Commissioner.*

The Board orders:

1. That the tolls published in Tariff C.R.C. No. E-4643, filed by the Canadian Pacific Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls which but for the said Act would have been effective in lieu of those published in the said Tariff C.R.C. No. E-4643, approved herein, are those published in Canadian Pacific Railway Tariff C.R.C. No. E-4622.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 50017

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act

File No. 34822.12

WEDNESDAY, the 21st day of June, A.D. 1933.

S. J. MCLEAN, *Assistant Chief Commissioner.*
G. A. STONE, *Commissioner.*

The Board orders:

1. That the toll published in Tariff C.R.C. No. E-4654, filed by the Canadian Pacific Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll for the purpose of reimbursement on traffic carried under the said Tariff C.R.C. No. E-4654 is 3 cents per 100 pounds.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 50018

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act

File No. 34822.15

WEDNESDAY, the 21st day of June, A.D. 1933.

S. J. MCLEAN, *Assistant Chief Commissioner.*
G. A. STONE, *Commissioner.*

The Board orders:

1. That the tolls published in item No. 205A of Supplement No. 27 to Tariff C.R.C. No. 157, filed by the Fredericton and Grand Lake Coal and Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls for the purpose of reimbursement on traffic carried under the said item 205A of Supplement No. 27 to Tariff C.R.C. No. 157 are as follows:—

	Rates in cents per 100 pounds
To Minto, N.B. from Cumberland Bay, N.B.	$3\frac{1}{2}$
Glennie, N.B.	$3\frac{1}{2}$
Chipman, N.B.	3

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 50019

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act

File No. 34822.15

WEDNESDAY, the 21st day of June, A.D. 1933.

S. J. MCLEAN, *Assistant Chief Commissioner.*
G. A. STONE, *Commissioner.*

The Board orders:

1. That the toll of 90 cents per ton on coal published in Supplement No. 14 to Tariff C.R.C. No. 160, filed by the Fredericton and Grand Lake Coal and Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll for the purpose of reimbursement on traffic carried under the said Supplement No. 14 to Tariff C.R.C. No. 160 is $1.15 per ton.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 50020

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.15

WEDNESDAY, the 21st day of June, A.D. 1933.

S. J. MCLEAN, *Assistant Chief Commissioner.*
G. A. STONE, *Commissioner.*

The Board orders:

1. That tolls published to Waterloo, Quebec, in Supplement No. 15 to Tariff C.R.C. No. 160, filed by the Fredericton and Grand Lake Coal and Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the noormal tolls which but for the said Act would have been effective in lieu of those published in the said Supplement No. 15 to Tariff C.R.C. No. 160, approved herein, are those published to Montreal, Quebec, in Fredericton and Grand Lake Coal and Railway Tariff C.R.C. No. 122.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 50021

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.15

WEDNESDAY, the 21st day of June, A.D. 1933.

S. J. MCLEAN, *Assistant Chief Commissioner.*
G. A. STONE, *Commissioner.*

The Board orders:

1. That the toll of 90 cents per ton to Saint John and West Saint John, New Brunswick, published in Supplement No. 16 to Tariff C.R.C. No. 160, filed by the Fredericton and Grand Lake Coal and Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll for the purpose of reimbursement on traffic carried under the said Supplement No. 16 to Tariff C.R.C. No. 160 is $1.15 per ton.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 50022

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.15

WEDNESDAY, the 21st day of June, A.D. 1933.

S. J. MCLEAN, *Assistant Chief Commissioner.*
G. A. STONE, *Commissioner.*

The Board orders:

1. That the tolls of $1 and $1.05 published in Supplement No. 17 to Tariff C.R.C. No. 160, filed by the Fredericton and Grand Lake Coal and Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls for the purpose of reimbursement on traffic carried under the said Supplement No. 17 to Tariff C.R.C. No. 160 are as follows:—

	Rates in cents per 100 pounds
From Pennlyn, N.B. to Saint John, N.B.	125
Fairville, N.B.	125
West Saint John	125
Fredericton, N.B.	130

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 50023

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.15

WEDNESDAY, the 21st day of June, A.D. 1933.

S. J. MCLEAN, *Assistant Chief Commissioner.*
G. A. STONE, *Commissioner.*

The Board orders:

1. That the toll of $1.10 per ton to Edmundston, New Brunswick, published in Supplement No. 19 to Tariff C.R.C. No. 160, filed by the Fredericton and Grand Lake Coal and Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll for the purpose of reimbursement to apply on traffic carried under the said Supplement No. 19 to Tariff C.R.C. No. 160 is $1.40 per ton.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 50024

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.15

WEDNESDAY, the 21st day of June, A.D. 1933.

S. J. MCLEAN, *Assistant Chief Commissioner.*
G. A. STONE, *Commissioner.*

The Board orders:

1. That the toll published to Edmundston, New Brunswick, in Supplement No. 20 to Tariff C.R.C. No. 160, filed by the Fredericton and Grand Lake Coal and Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll for the purpose of reimbursement on traffic carried under the said Supplement No. 20 to Tariff C.R.C. No. 160 is $1.65 per ton.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 50025

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act; and the Order of the Board No. 48896 dated July 22nd, 1932.

File No. 34822.17

WEDNESDAY, the 21st day of June, A.D. 1933.

S. J. MCLEAN, *Assistant Chief Commissioner.*
G. A. STONE, *Commissioner.*

The Board orders:

1. That the tolls published in Supplement No. 2 to Tariff C.R.C. No. 25, filed by the Cumberland Railway and Coal Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls for the purpose of reimbursement on traffic carried under the said Supplement No. 2 to Tariff C.R.C. No. 25 are as follows:—

From	Rates in cents per 100 pounds
Halfway River, N.S.	3
West Brook, N.S.	3
Southampton, N.S.	4
East Southampton, N.S.	4

3. And the Board further orders that the said Order No. 48896, dated July 22, 1932, made herein, be, and it is hereby, rescinded.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER NO. 50006

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.2

THURSDAY, the 22nd day of June, A.D. 1933.

S. J. MCLEAN, *Assistant Chief Commissioner.*
G. A. STONE, *Commissioner.*

The Board orders:

1. That the tolls published in tariffs filed by the Canadian National Railways under section 3 of the Maritime Freight Rates Act be, and they are hereby, approved, subject to the provisions of subsection 3, of section 3, of the said Act, as follows, namely:—

Supplement No. 14, to Tariff C.R.C. No. E-1226.
Supplements Nos. 34, 35, 36, 37, 38, 39, and 40 to Tariff C.R.C. No. E-1230.
Supplement No. 16 to Tariff C.R.C. No. E-1233.
Supplements Nos. 35, 36, 37, and 38 to Tariff C.R.C. No. E-1234.
Supplements Nos. 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, and 71 to Tariff C.R.C. No. E-1235.

Supplements Nos. 17, 18, and 19 to Tariff C.R.C. No. E-1238.
Supplements Nos. 19, 20, 21, and 22 to Tariff C.R.C. No E-1239.
Supplements Nos. 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, and 59 to Tariff C.R.C. No. E-1240.
Supplements Nos. 14, 15, 16, and 17 to Tariff C.R.C. No. E-1241.
Supplement No. 7 to Tariff C.R.C. No. E-1242.
Supplements Nos. 37, 38, 39, and 40 to Tariff C.R.C. No E-1244.
Supplements Nos. 36, 37, and 38 to Tariff C.R.C. No. E-1246.
Supplements Nos. 22, 23, and 24 to Tariff C.R.C. No. E-1247.
Supplements Nos. 14, 15, and 16 to Tariff C.R.C. No. E-1251.
Supplement No. 15 to Tariff C.R.C. No. E-1256.
Supplements Nos. 22 and 23 to Tariff C.R.C. No. E-1258.
Supplement No. 10 to Tariff C.R.C. No. E-1261.
Supplements Nos. 15, 16, 17, 18, 19, 20, 21, and 22 to Tariff C.R.C. No. E-1504.
Supplement No. 14 to Tariff C.R.C. No. E-1649.
Supplements Nos. 5, 6, and 7 to Tariff C.R.C. No. E-1671.
Supplement No. 9 to tariff C.R.C. No. E-1689.
Supplements Nos. 9, 10, 11, 12, and 13 to Tariff C.R.C. No. E-1702.
Supplements Nos. 6, 7, and 8 to Tariff C.R.C. No. E-1737.
Supplements Nos. 2, 3, and 4 to Tariff C.R.C. No. E-1745.
Supplements Nos 10, 11, 12, 13, 14, and 15 to Tariff C.R.C. No. E-1804.
Supplements Nos. 1, 2, 3, 4, and 5 to Tariff C.R.C. No. E-1835.
Supplements Nos. 4, 5, 6, 7, 8, and 9 to Tariff C.R.C. No. E-1829.
Tariff C.R.C. No. E-1880.
Tariff C.R.C. No. E-1906.
Supplements Nos. 1 and 2 to Tariff C.R.C. No. E-1906.
Supplement No. 1 to Tariff C.R.C. No. E-1974.
Tariffs Nos. C.R.C. E-1911, E-1920, E-1921, E-1926, E-1974, E-1976, E-1978, E-1982, E-1993, E-1998, and E-2018.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 50026

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act; and the Orders of the Board No. 47824, dated December 9, 1931, No. 47896, dated December 22, 1931, and 48419, dated April 13, 1932.

File No. 34822.12

THURSDAY, the 22nd day of June, A.D. 1933.

S. J. McLEAN, *Assistant Chief Commissioner.*
G. A. STONE, *Commissioner.*

The Board orders:

1. That the tolls published in items Nos. 242A, 534B, and 573B of Supplement No. 49 to Tariff C.R.C. No. E-4312, filed by the Canadian Pacific Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls for the purpose of reimbursement on traffic carried under the said items 242A, 534B, and 573B of Supplement No. 49 to Tariff C.R.C. No. E-4312 are as follows:—

Item 242-A To	Rates in cents per 100 pounds
Brantford, Ont.	41½
Goderich, Ont.	45½
Hamilton, Ont.	40
London, Ont.	45½
Montreal, Que.	34½
Niagara Falls, Ont.	40
Orillia, Ont.	40
Ottawa, Ont.	36½
Quebec, Que.	34½
St. Catharines, Ont.	40
St. Johns, Que.	34½
Stratford, Ont.	43
Toronto, Ont.	37½
Welland, Ont.	40
Windsor, Ont.	47
Woodstock, Ont.	43
Item 534-B To	
Brampton, Ont.	47½
Brantford, Ont.	49
Caledonia, Ont.	49
Cardinal, Ont.	41
Cornwall, Ont.	41
Danville, Que.	39½
Goderich, Ont.	54
Guelph, Ont.	49½
Hamilton, Ont.	48½
Kingston, Ont.	43
Kitchener, Ont.	49
London, Ont.	53
Magog, Que.	38½
Montreal, Que.	38½
Peterboro, Ont.	44½
Port Credit, Ont.	48½
Quebec, Que.	38
St. Catharines, Ont.	48
St. Hyacinthe Que.	38½
Sherbrooke, Que.	37½
Toronto, Ont.	47
Valleyfield, Que.	40
Waterloo, Que.	38½
Welland, Ont.	48½
Woodstock, Ont.	54

Item 573-B From St. John, N.B. To	In boxes or crates	In bundles
Belleville, Ont.	93½	154
Brantford, Ont.	111½	181
Brockville, Ont.	89½	148
Chatham, Ont.	125½	202
Cobalt, Ont.	158½	251½
Cochrane, Ont.	176½	278½
Cornwall, Ont.	89½	148
Edmundston, N.B.	76½	130
Galt, Ont.	111½	181
Guelph, Ont.	108	175½
Haileybury, Ont.	158½	251½
Hamilton, Ont.	104½	171
Hanover, Ont.	123	198
Iroquois Falls, Ont.	176½	278½
Kingston, Ont.	93½	154
Kitchener, Ont.	111½	181
Lindsay, Ont.	100½	165
London, Ont.	118½	191½
Midland, Ont.	111½	181
Montreal, Que.	85½	143
New Liskeard, Ont.	162	256
Niagara Falls, Ont.	108	175½
North Bay, Ont.	108	175½

Item 573-B

From St. John, N.B. To	In boxes or crates	In bundles
Ottawa, Ont.	89½	148
Pembroke, Ont.	90	148½
Peterboro, Ont.	97½	160
Port Hope, Ont.	97½	160
Quebec, Que.	86	144½
Renfrew, Ont.	90	148½
St. Catharines, Ont.	108	175½
St. Thomas, Ont.	119	192
Sault Ste. Marie, Ont.	129½	208
Sherbrooke, Que.	82	137½
Sudbury, Ont.	119	192
Timmins, Ont.	176½	278½
Toronto, Ont.	100½	165
Trenton, Ont.	93½	154
Trois Rivieres, Que.	85	142½
Victoria Park, Ont.	108	175½
Woodstock, Ont.	116	187½

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 50027

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.12

THURSDAY, the 22nd day of June, A.D. 1933.

S. J. McLEAN, *Assistant Chief Commissioner.*
G. A. STONE, *Commissioner.*

The Board orders:

1. That the tolls published in item No. 533A of Supplement No. 50 to Tariff C.R.C. No. E-4312, filed by the Canadian Pacific Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls for the purpose of reimbursement on traffic moving under the said item 533A of Supplement No. 50 to Tariff C.R.C. No. E-4312 are as follows:—

Distances—	Rates in cents per 100 pounds
Not over 5 miles	6
Over 5 to 15 miles	6½
Over 15 to 20 miles	7
Over 20 to 30 miles	7½
Over 30 to 40 miles	9
Over 40 to 50 miles	10
Over 50 to 70 miles	11½
Over 70 to 80 miles	12½
Over 80 to 90 miles	13
Over 90 to 100 miles	14

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 50028

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.12

THURSDAY, the 22nd day of June, A.D. 1933.

S. J. MCLEAN, *Assistant Chief Commissioner.*
G. A. STONE, *Commissioner.*

The Board orders:

1. That the tolls to Grand Mere, Quebec, published in item 220C of Supplement No. 51 to Tariff C.R.C. No. E-4312, filed by the Canadian Pacific Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls which but for the said Act would have been effective in lieu of those published in the said item No. 220C of Supplement No. 51 to Tariff C.R.C. No. E-4312, are for carloads 50 cents and for less than carloads 75½ cents per 100 pounds.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER NO. 49993

In the matter of the application of the Michigan Central Railroad Company, hereinafter called the "Applicant Company," for permission to correct an error in a rate effective June 20, 1933, now published in tariff C.R.C. No. 3599.

File No. 27612.78.

FRIDAY, the 23rd day of June, A.D. 1933.

S. J. MCLEAN, *Assistant Chief Commissioner.*
J. A. STONEMAN, *Commissioner.*

Upon its appearing that in reissuing, in item No. 50 of Tariff C.R.C., No. 3599, rates on canned goods published in item No. 177E of Supplement No. 147 to Tariff C.R.C. No. 3486, the rate from Waterford, Ontario, to points named in Group 2 thereof was shown as 25 cents instead of the correct rate of 35 cents per 100 pounds, the latter rate being effective via competing lines; and upon its being desirable that the rate be uniform via all lines,—

It is Ordered: That the applicant company be, and it is hereby, permitted to publish, effective June 20, 1933, a rate of 35 cents per 100 pounds on canned goods from Waterford, Ontario, to Grand'Mere, Quebec, and other points named in Group 2 of item 50 in Tariff C.R.C. No. 3599; and to cancel, effective on the same date, the rate of 25 cents erroneously published.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER NO. 50000

In the matter of the application of the Dominion Atlantic Railway Company, hereinafter, called the "Applicant Company," for permission to file, upon one day's notice, a tariff to correct an error in a rate on sugar from Halifax, Nova Scotia, to Windsor, Ontario.

File No. 27612.79.

SATURDAY, the 24th day of June, A.D. 1933.

S. J. MCLEAN, *Assistant Chief Commissioner.*
J. A. STONEMAN, *Commissioner.*
G. A. STONE, *Commissioner.*

Upon its appearing that the rate on sugar, carloads, minimum 80,000 pounds, from Halifax, Nova Scotia, to Windsor, Ontario, was shown in Tariff C.R.C. No. 884 as 21 cents, instead of 31 cents per 100 pounds the correct rate, the latter rate being published by the Canadian National Railways; and its being desirable that the error be corrected immediately, to preserve uniformity via all routes,—

It is Ordered: That the applicant company be, and it is hereby, permitted to file, upon one day's notice, a tariff providing for a rate of 31 cents per 100 pounds on sugar, carloads, minimum 80,000 pounds, from Halifax, Nova Scotia, to Windsor, Ontario, cancelling the rate of 21 cents now published in the applicant company's said Tariff C.R.C. No. 884.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 50029

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.12

SATURDAY, the 24th day of June, A.D. 1933.

S. J. MCLEAN, *Assistant Chief Commissioner.*
G. A. STONE, *Commissioner.*

The Board orders:

1. That the tolls published in item No. 567 of Supplement No. 32 to Tariff C.R.C. No. E-4312, filed by the Canadian Pacific Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls which but for the said Act would have been effective in lieu of those published in the said item No. 567 of Supplement No. 32 to Tariff C.R.C. No. E-4312 are as follows:—

Rates in Cents per 100 Pounds

Less than carloads	Carloads
68	36½

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 50030

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13

MONDAY, the 26th day of June, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the toll published in item No. 75 of Supplement No. 22 to Tariff C.R.C. No. 811, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal rate which but for the said Act would have been effective in lieu of that published in the said item No. 75 of Supplement No. 22 to Tariff C.R.C. No. 811, approved herein, is 9 cents per 100 pounds.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 50031

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13

MONDAY, the 26th day of June, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the tolls published in item No. 59 of Supplement No. 29 to Tariff C.R.C. No. 812, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act; and the Dominion Atlantic Railway Company's proportion to be reported at 9 cents per 100 pounds.

2. And the Board hereby certifies that the Dominion Atlantic Railway Company's proportion of the normal toll which but for the said Act would have been effective in lieu of that published in the said item No. 59 of Supplement No. 29 to Tariff C.R.C. No. 812, approved herein, is 11½ cents per 100 pounds.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 50032

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13

MONDAY, the 26th day of June, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the toll published in Supplement No. 30 to Tariff C.R.C. No. 812, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act; and the Dominion Atlantic Railway Company's proportion to be reported at 11·9 cents per 100 pounds.

2. And the Board hereby certifies that the Dominion Atlantic Railway Company's proportion of the normal tolls for the purpose of reimbursement on traffic carried under the said Supplement No. 30 to Tariff C.R.C. No. 812 is 14·9 cents per 100 pounds.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 50033

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13

MONDAY, the 26th day of June, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the toll published from Saint John, New Brunswick, to Windsor, Nova Scotia, in item No. 85-B of Supplement No. 32 to Tariff C.R.C. No. 812, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act; the Dominion Atlantic Railway Company's proportion to be reported at 16·3 cents per 100 pounds.

2. And the Board hereby certifies that the Dominion Atlantic Railway Company's proportion of the normal toll which but for the said Act would have been effective in lieu of that published in the said item No. 85-B of Supplement No. 32 to Tariff C.R.C. No. 812 is 20·3 cents per 100 pounds.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 50043

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act

File No. 34822.13

TUESDAY, the 27th day of June, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the tolls published from Saint John, New Brunswick, to Annapolis, Nova Scotia, in item No. 46-B of Supplement No. 28 to Tariff C.R.C. No. 812, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act; the Dominion Atlantic Railway Company's proportion to be reported at 15¾ cents per 100 pounds.

2. And the Board hereby certifies that the Dominion Atlantic Railway Company's proportion of the normal toll for the purpose of reimbursement on traffic carried under the said item No. 46-B of Supplement No. 28 to Tariff C.R.C. No. 812, on and after September 23, 1932, is 19¾ cents per 100 pounds.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 50044

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act

File No. 34822.13

TUESDAY, the 27th day of June, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the tolls published in item No. 54 of Supplement No. 33 to Tariff C.R.C. No. 812, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act; the Dominion Atlantic Railway Company's proportion to be reported at 7·1 cents per 100 pounds to stations Paradise, Nova Scotia, to Berwick, Nova Scotia, inclusive, and at 10 cents per 100 pounds to stations Waterville, Nova Scotia, to Windsor, Nova Scotia, inclusive, Centreville, Nova Scotia, to Kingsport, Nova Scotia, inclusive, and Billtown, Nova Scotia, to Weston, Nova Scotia, inclusive.

2. And the Board hereby certifies that the Dominion Atlantic Railway Company's proportion of the normal tolls for the purpose of reimbursement on traffic carried under the said item 54 of Supplement No. 33 to Tariff C.R.C. No. 812 are as follows:—

	Rates in cents per 100 pounds
Paradise, N.S., to Berwick, N.S., inclusive	9.9
Waterville, N.S., to Windsor, N.S., inclusive Centreville, N.S., to Kingsport, N.S., inclusive Billtown, N.S., to Weston, N.S., inclusive	12

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 50045

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act

File No. 34822.13

TUESDAY, the 27th day of June, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the tolls published in Supplement No. 1 to Tariff C.R.C. No. 875, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls for the purpose of reimbursement to apply on traffic carried under the said Supplement No. 1 to Tariff C.R.C. No. 875, from September 23, 1932, to January 18, 1933, inclusive, are as follows:—

From—	Rates in cents per 100 pounds
Ellershouse, N.S. Newport, N.S.	12½
Windsor, N.S. Hantsport, N.S.	12½
Avonport, N.S. Port Williams, N.S.	13
Kentville, N.S.	14
Coldbrooke, N.S. Berwick, N.S.	16½
Aylesford, N.S. Kingston, N.S.	17
Wilmot, N.S. Annapolis Royal, N.S.	19
Clementsport, N.S. Digby, N.S.	21½
North Range, N.S. Yarmouth, N.S.	25½
Brooklyn, N.S. Mosherville, N.S.	13
Clarksville, N.S. Kennetcook, N.S.	14
South Maitland, N.S. Lower Truro, N.S.	17
Mill Village, N.S. Kingsport, N.S.	16½
Billtown, N.S. Grafton, N.S.	16½
Somerset, N.S. Weston, N.S.	17

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 50042

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act

File No. 34822.2

TUESDAY, the 27th day of June, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

The Board orders: That the tolls published in Supplement No. 16 to Tariff C.R.C. No. E-1233 and in Tariff C.R.C. No. E-2020, filed by the Canadian National Railways under section 3 of the Maritime Freight Rates Act, be, and they are hereby, approved subject to the provisions of subsection 3 of the said section 3.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 50049

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.2

WEDNESDAY, the 28th day of June, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

The Board orders: That the tolls published in Supplement No. 18 to Tariff C.R.C. No. E-1241, filed by the Canadian National Railways under section 3 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 50050

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Martime Freight Rates Act; and the Orders of the Board No. 47344 dated September 11, 1931, No. 48510 dated April 26, 1932, and No. 48789 dated June 27, 1932, approving the tolls published in Item 89 of Supplement No. 22, Item 49 of Supplement No. 24, and Item 90 of Supplement No. 27 to Tariff C.R.C. No. 812, filed by the Dominion Atlantic Railway Company.

File No. 34822.13

WEDNESDAY, the 28th day of June, A.D. 1933

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the tolls published in items 49, 89, and 90 of Supplement No. 27 to Tariff C.R.C. No. 812, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved,

subject to the provisions of subsection 3 of section 3 of the said Act; the Dominion Atlantic Railway Company's proportions to be reported as follows:—

For item 49—7·1 cents per 100 pounds.
For item 89—9·8 cents per 100 pounds.
For item 90—9·7 cents per 100 pounds.

2. And the Board hereby certifies that the Dominion Atlantic Railway Company's proportion of the normal tolls for the purpose of reimbursement on traffic carried on and after September 23, 1932, under the said items 49, 89, and 90 of Supplement No. 27 to Tariff C.R.C. No. 812 are as follows:—

For item 49—8·9 cents per 100 pounds.
For item 89—12·3 cents per 100 pounds.
For item 90—12 cents per 100 pounds.

3. And the Board further orders that the said Orders No. 47344 dated September 11, 1931, No. 48510 dated April 26, 1932, and No. 48789 dated June 27, 1932, be, and they are hereby, rescinded.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 50052

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act; and the Order of the Board No. 47319, dated September 2, 1931, approving tolls published on pulpwood in Supplement No. 34 to Tariff C.R.C. No. 817, filed by the Dominion Atlantic Railway Company.

File No. 34822.13

WEDNESDAY, the 28th day of June, A.D. 1933

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the tolls published in item No. 90-C of Supplement No. 34 to Tariff C.R.C. No. 817, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls for the purpose of reimbursement on traffic carried under the said item 90-C of Supplement No. 34 to Tariff C.R.C. No. 817, between September 23, 1932, and November 1, 1932, are as follows:—

Distances	Rates in cents per 100 pounds
Not over 20 miles	4
Over 20 to 40 miles	4½
Over 40 to 50 miles	5
Over 50 to 60 miles	5½
Over 60 to 75 miles	6½
Over 75 to 100 miles	7
Over 100 to 125 miles	7½
Over 125 to 150 miles	8

3. And the Board further orders that the said Order No. 47319, dated September 2, 1931, be, and it is hereby, rescinded as from September 23, 1932.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 50053

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act; and Orders No. 47617, dated November 5, 1931, and No. 48423, dated April 13, 1932, approving the tolls published in Item 155-A of Supplement No. 40, and Item 45-B and Item 156 of Supplement No. 44 to Tariff C.R.C. No. 817, filed by the Dominion Atlantic Railway Company.

File No. 34822.13

WEDNESDAY, the 28th day of June, A.D. 1933

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the tolls published in items 75-A, 155-A, 156-A, and 166 of Supplement No. 53, and item 75-B of Supplement No. 54, to Tariff C.R.C. No. 817, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls for the purpose of reimbursement on traffic carried on and after September 23, 1932, under the said items 75-A, 155-A, 156-A, and 166 of Supplement No. 53, and item 75-B of Supplement No. 54, to Tariff C.R.C. No. 817, are as follows:—

Item	Rates in cents per 100 pounds
75-A	9½
155-A	5½
156-A	4
166	12
75-B	9½

3. And the Board further orders that the said Orders No. 47617 dated November 5, 1931, and No. 48423 dated April 13, 1932, be, and they are hereby, rescinded.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 50054

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13

WEDNESDAY, the 28th day of June, A.D. 1933

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the tolls published in item 90-D of Supplement No. 55 to Tariff C.R.C. No. 817, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls for the purpose of reimbursement on traffic carried under the said item 90-D of Supplement No. 55 to Tariff C.R.C. No. 817 are as follows:—

Distances	Rates in cents per 100 pounds
Not over 20 miles	3
Over 20 to 50 miles	4
Over 50 to 60 miles	5½
Over 60 to 75 miles	6
Over 75 to 100 miles	7
Over 100 to 125 miles	7½
Over 125 to 150 miles	8

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 50055

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13

WEDNESDAY, the 28th day of June, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the toll published in item 170 of Supplement No. 56 to Tariff C.R.C. No. 817, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll for the purpose of reimbursement on traffic carried under the said item 170 of Supplement No. 56 to Tariff C.R.C. No. 817 is 9½ cents per 100 pounds.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 50056

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13

WEDNESDAY, the 28th day of June, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the tolls published in item 175-A, and from Kentville, Nova Scotia, in item 15, of Supplement No. 58 to Tariff C.R.C. No. 817, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls for the purpose of reimbursement on traffic carried under the said items 175-A and 15 of Supplement No. 58 to Tariff C.R.C. No. 817 are as follows:—

Item 175-A To	Rates in cents per 100 pounds
Port Williams, N.S.	7
Waterville, N.S.	7½
Berwick, N.S.	7½
Canning, N.S.	7
Item 15 From	
Kentville, N.S.	9

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 50057

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13

WEDNESDAY, the 28th day of June, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the toll published in item 170-A of Supplement No. 59 to Tariff C.R.C. No. 817, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll for the purpose of reimbursement on traffic carried under the said item 170-A of Supplement No. 59 to Tariff C.R.C. No. 817 is 9½ cents per 100 pounds.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 50058

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13

WEDNESDAY, the 28th day of June, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the toll published to Port Williams in item 175-B of Supplement No. 60 to Tariff C.R.C. No. 817, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll for the purpose of reimbursement on traffic carried under the said item 175-B of Supplement No. 60 to Tariff C.R.C. No. 817, is 7½ cents per 100 pounds.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 50059

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13

WEDNESDAY, the 28th day of June, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the tolls published in item 175-C of Supplement No. 61 to Tariff C.R.C. No. 817, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls for the purpose of reimbursement on traffic carried under the said item 175-C of Supplement No. 61 to Tariff C.R.C. No. 817 are as follows:—

To	Rates in cents per 100 pounds
Hantsport, N.S.	7
Weston, N.S.	9
Kingsport, N.S.	
Berwick, N.S.	

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 50051

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act; and the Order of the Board No. 48063, dated February 1, 1932, approving the toll published in Item 46-A of Supplement No. 23 to Tariff C.R.C. No. 812, filed by the Dominion Atlantic Railway Company.

File No. 34822.13

THURSDAY, the 29th day of June, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the toll published in item 46-B of Supplement No. 28 to Tariff C.R.C. No. 812, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act; the Dominion Atlantic Railway Company's proportion to be reported at 15·5 cents per 100 pounds.

2. And the Board hereby certifies that the Dominion Atlantic Railway Company's proportion of the normal toll for the purpose of reimbursement on traffic carried on and after September 23, 1932, under the said item 46-B of Supplement No. 28 to Tariff C.R.C. No. 812 is 19·4 cents per 100 pounds.

3. And the Board further orders that the said Order No. 48063, dated February 1, 1932, be, and it is hereby, rescinded.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 50060

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13

THURSDAY, the 29th day of June, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Asst. Chief Commissioner.*

The Board orders:

1. That the toll published from O'Brien's Siding, Nova Scotia, in item 70-B of Supplement No. 62 to Tariff C.R.C. No. 817, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll for the purpose of reimbursement on traffic carried under the said item 70-B of Supplement No. 62 to Tariff C.R.C. No. 817 is 9 cents per 100 pounds.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 50061

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13

THURSDAY, the 29th day of June, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Asst. Chief Commissioner.*

The Board orders:

1. That the toll published in item 45-A of Supplement No. 15 to Tariff C.R.C. No. 851, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll for the purpose of reimbursement on traffic moving on and after September 23, 1932, under the said item 45-A of Supplement No. 15 to Tariff C.R.C. No. 851 is 16½ cents per 100 pounds.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 50062

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13

THURSDAY, the 29th day of June, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. McLEAN, *Asst. Chief Commissioner.*

The Board orders:

1. That the tolls published in item 5-A of Supplement No. 17 to Tariff C.R.C. No. 851, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls for the purpose of reimbursement on traffic moving under the said item 5-A of Supplement No. 17 to Tariff C.R.C. No. 851 are as follows:—

From	Rates in cents per 100 pounds
Aylesford, N.S.	25
Port Williams, N.S.	19

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 50063

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13

THURSDAY, the 29th day of June, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. McLEAN, *Asst. Chief Commissioner.*

The Board orders:

1. That the tolls published in item 11 of Supplement No. 18 to Tariff C.R.C. No. 851, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls for the purpose of reimbursement on traffic carried under the said item 11 of Supplement No. 18 to Tariff C.R.C. No. 851 are as follows:—

	Rates in cents per 100 pounds
Carload minimum 45,000 pounds	19
Carload minimum 60,000 pounds	16

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 50064

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13

THURSDAY, the 29th day of June, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Asst. Chief Commissioner.*

The Board orders:

1. That tolls published from Bridgetown, Nova Scotia, in item 5-B, and from Middleton, Nova Scotia, in item 11-A of Supplement No. 19 to Tariff C.R.C. No. 851, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls for the purpose of reimbursement on traffic carried under the said items 5-B and 11-A of Supplement No. 19 to Tariff C.R.C. No. 851 are as follows:—

	Rates in cents per 100 pounds
Item 5-B From Bridgetown, N.S.	25
Item 11-A From Middleton, N.S.	
Carload minimum 45,000 pounds	19
Carload minimum 60,000 pounds	16

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 50065

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13

THURSDAY, the 29th day of June, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Asst. Chief Commissioner.*

The Board orders:

1. That the toll published in item 62 of Supplement No. 20 to Tariff C.R.C. No. 851, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll for the purpose of reimbursement on traffic carried under the said item 62 of Supplement No. 20 to Tariff C.R.C. No. 851 is 12 cents per 100 pounds.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 50066

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13

THURSDAY, the 29th day of June, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Asst. Chief Commissioner.*

The Board orders:

1. That the toll published in item 11-B of Supplement No. 21 to Tariff C.R.C No. 851, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll for the purpose of reimbursement on traffic carried under the said item 11-B of Supplement No. 21 to Tariff C.R.C. No. 851 is 16 cents per 100 pounds.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 50067

In the matter of tariffs, and supplements to tariffs filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13

THURSDAY, the 29th day of June, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Asst. Chief Commissioner.*

The Board orders:

1. That the toll published in item 11-C of Supplement No. 22 to Tariff C.R.C. No. 851, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll for the purpose of reimbursement on traffic carried under the said item 11-C of Supplement No. 22 to tariff C.R.C. No. 851 is 16 cents per 100 pounds.

C. P. FULLERTON,
Chief Commissioner.

GENERAL ORDER No. 515

In the matter of the application of The Railway Association of Canada for approval of Specification for the Construction of New Mail Apartment Self-propelled Cars, on file with the Board under file No. 3083.43.

TUESDAY, the 27th day of June, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
J. A. STONEMAN, *Commissioner.*
G. A. STONE, *Commissioner.*

Upon reading what is filed in support of the application and on behalf of the Railway Mail Service Branch of the Post Office Department; and upon the report and recommendation of the Chief Operating Officer of the Board,—

It is ordered:

1. That the "Specification for the Construction of New Mail Apartment Self-propelled Cars," dated February 23, 1933, as amended and corrected, on file with the Board under file No. 3083.43, be, and it is hereby, approved and adopted as the standard to be used by railway companies operating in Canada and within the legislative authority of the Parliament of Canada.

2. That the "Specification for Mail Cars," dated May 22, 1918, approved by General Order No. 259, dated January 13, 1919, be amended by striking out Notes 1 and 2 of section 5, on page 2 thereof.

C. P. FULLERTON,
Chief Commissioner,

ACCIDENTS REPORTED TO THE OPERATING DEPARTMENT, BOARD OF RAILWAY COMMISSIONERS, FOR MONTH OF APRIL, 1933

Railway accidents	111,	with 4 persons killed and	112 injured.
Railway accidents at highway crossings	11,	with 0 persons killed and	16 injured.
	122	4	128

	Killed	Injured
Passengers	–	9
Employees	–	84
Others	4	35
	4	128

DETAILS OF ACCIDENTS AT HIGHWAY CROSSINGS

No. of Accidents	
	Ontario
3	Automobile—Auto ran into side of train. Ont. licences CL-397, EO-689, EF-92.
1	Automobile—Ran into side of rail motor-car. Ont. licence CY-201.
1	Automobile—Auto driver did not have car under control Ont. licence KM-864.
1	Automobile—Auto driver failed to take any precaution approaching crossing. Ont. licence EU-141.
1	Auto truck—Truck driver failed to obey wig-wag signal. Ont. licence 57725-C.
1	Auto truck—Truck driver failed to hear train, due to noise of truck. Ont. licence 49061-C.
1	Horse-drawn vehicle—Inattention on part of wagon driver.
	Alberta
1	Auto truck—Truck driver failed to heed warning by section foreman. Alta. licence BT-655.
	Saskatchewan
1	Horse-drawn vehicle—Sleigh loaded with lumber stalled on crossing.

Of the eleven accidents at highway crossings, ten occurred at unprotected crossings and one at a protected crossing. Six of the accidents occurred during the daylight hours and five at night.

Ottawa, July 3, 1933.

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DEC 4

The Board of

Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

Vol. XXIII | Ottawa, August 1, 1933 | No. 10

This publication is issued fortnightly, on the 1st and 15th of each month. Annual subscription, $3.00; single numbers, 20 cents; in quantities, 25 per cent discount. Remittances should be made to the King's Printer, Ottawa, by postal money order, express order or accepted cheque. The use of currency for this purpose is contrary to the advice of the postal authorities and entails a measure of risk. Postage stamps, foreign money or uncertified cheques will not be accepted. No extra charge is made for postage on documents forwarded to points in Canada and in the United States, but cost of postage is added to the selling price when documents are mailed to other countries. Early application should be made for copies in quantities. Subscriptions should be sent, in every case, to the King's Printer, Ottawa.

Application of the Canadian National Railways for an inquiry and hearing by the Board and a determination in the matter of a dispute between the Canadian National Railway Company, the Canadian Pacific Railway Company, and the Northern Alberta Railways Company in respect of an agreement, dated January 29, 1929, and the provisions of Chapter 48 of the Statutes of Canada, 1929, the dispute arising over the interpretation of the words "and destined via Edmonton or Morinville to competitive points on or beyond the lines of the parties" contained in Clause 7 of the said Agreement.

File No. 38702

JUDGMENT

FULLERTON, CHIEF COMMISSIONER:

The real question for decision in this matter is the interpretation of a clause in an agreement entered into on the 29th January, 1929, between the Canadian Pacific Railway Company and the Canadian National Railway Company, hereinafter referred to as the Canadian Pacific and Canadian National.

The agreement in question was confirmed by chapter 48 of the Statutes of Canada for the year 1929. It involved the purchase by the Canadian Pacific and Canadian National of four railways running northerly from Edmonton. These railways were the Edmonton, Dunvegan and British Columbia Railway, the Alberta and Great Waterways Railway, the Central Canada Railway, and the Pembina Railway.

From 1920 to 1926 the Canadian Pacific operated the Edmonton, Dunvegan and British Columbia Railway and the Central Canada Railway under an arrangement with the owners.

From 1926 to 1929 these roads were operated by the Province of Alberta and during that time the Canadian National was the connecting carrier.

The major portion of the traffic from these lines is wheat destined for export and both railway companies were anxious to secure it. By the agreement the Canadian Pacific and Canadian National agreed to join in the purchase of these railways, each assuming one-half of the purchase price and one-half of the obligations incurred in connection with the purchase. A new company was to be formed to acquire, maintain and operate them, the capital of which was to be supplied by the Canadian Pacific and Canadian National in equal shares, and each was to be entitled to appoint one-half the directors.

The purchase was duly completed and a new company known as the Northern Alberta Railway Company, which I will hereafter refer to as the Northern Company, was formed, which took over and operated the railways so purchased.

The provision of the agreement which has created the difficulty is paragraph 7, which reads as follows:—

> "The new company shall be required to route outbound freight traffic (including grain milled or stored in transit) originating on the lines of the new company and destined via Edmonton or Morinville to competitive points on or beyond the lines of the parties, in such a way that each of the parties shall receive on a revenue basis one-half of the outbound freight traffic originating and destined as aforesaid, including such freight traffic routed by the shipper, as well as such freight traffic unrouted by the shipper. Comparisons on a revenue basis of the traffic so received by each of the parties shall be made monthly, and any inequality of division in any month shall be rectified in succeeding months. The foregoing provisions in respect to freight traffic shall apply also to outbound express traffic and telegraph traffic respectively, originating on the lines of the new company and destined to competitive points on or beyond the lines of the parties. For the purpose of the division of traffic in this paragraph provided for, freight traffic, express traffic, and telegraph traffic shall be divided and dealt with separately."

The difficulty arises in connection with the interpretation of the words "and destined via Edmonton or Morinville to competitive points on or beyond the lines of the parties." The Canadian Pacific contends that the words "competitive points" include points beyond the lines of the Canadian Pacific or Canadian National, or their railway connections, such as foreign points which are accessible to shipping from any ports in Canada. The Canadian National, on the other hand, contends that the words "competitive points" mean points common to both the Canadian Pacific and Canadian National, or their connecting rail carriers, to which the rates from the shipping points on the Northern Company's lines via both the Canadian Pacific and Canadian National, with or without connecting carriers, are equal.

The real dispute settles around the ports of Prince Rupert and Victoria, both of which are served, so far as the export grain traffic is concerned, by the Canadian National alone. The Canadian National carries outbound export grain traffic from the lines of the Northern Company to Prince Rupert, Victoria and Vancouver. The Canadian Pacific carries to Vancouver, but not to the other two ports. The Canadian Pacific contends that export freight traffic to Prince Rupert and Victoria is outbound freight traffic destined "to competitive points . . . beyond the lines of the parties" within the meaning of clause 7. The Canadian National contends that Vancouver alone of the three ports is a competitive point within the meaning of clause 7, and denies the right of the Northern Company to take into consideration traffic going to the ports of Victoria and Prince Rupert in effecting the equalization referred to in clause 7.

The rates and conditions of carriage of grain shipped for export from points on the Northern Company to all three of the ports above referred to are identical. The question is, what did the parties mean by the use of the words "competitive points on or beyond the lines of the parties"? I have always understood "competitive points" in railway parlance to mean points in respect to which two or more lines compete for traffic. In other words, a point at which two or more railways have facilities and are prepared to handle traffic offered at equal rates. Reading the words in the ordinary way, I think there can be no doubt that "competitive points on or beyond the lines of the parties" means points on the lines of the parties or their connecting carriers, and have no reference to any point other than one on a railway.

As I understand Mr. Tilley's argument, he contends that "beyond" may refer to a point in a foreign country, to which commodities may be carried. I do not think that the words can possibly bear any such interpretation.

Mr. Tilley says:—

> "You cannot whittle down that 'on or beyond' to say that they are on railway lines, either those of the railway company or other connecting carriers. The point of that description is to say in the broadest possible way that so long as it is outbound freight traffic originating on the lines of the new company, if it is destined to competitive points it matters not where that competitive point is, it may be on the railways or any place beyond."

Though he did not say so in express words, his argument must go the length of asking us to hold that all points to which commodities may be exported are competitive points. For example, it is said that grain carried over the Canadian National to Victoria and shipped thence to the United Kingdom or the Orient is outbound freight traffic to competitive points beyond the lines of the companies because both destinations are competitive points. We are not told in what sense they are competitive points. We know that so far as concerns the carriage of this traffic by these railways, namely for that portion of the haul from points on the Northern Company to Victoria, the Canadian Pacific does not compete.

The word "competitive" as used in the agreement must have reference to competition between railways. The parties were only interested in securing the carriage of grain to a port. What becomes of it afterwards did not in the least interest them. If the parties intended what Mr. Tilley now contends they did, they should have said so, and this is particularly true when one considers the meaning which both parties had, long prior to the agreement, given to the words "competitive traffic."

In the Board's General Order No. 252, *re* interswitching, it is set out that "nothing herein contained shall prevent the line carrier from absorbing the entire toll, or tolls, charged for interswitching competitive traffic, provided that the traffic and movements so treated are clearly defined in its tariffs." Turning to the tariffs of the Canadian Pacific and Canadian National as in effect in both Eastern and Western Canada, covering rules and regulations governing interswitching charges, they are found to all contain the following definition of competitive traffic:—

> "Definition of Competitive Traffic
>
> *At Point of Origin.*—When the railway performing the switching service can handle the shipment in road-haul movement from the origin station at equal rate.
>
> *At Destination.*—When the railway performing the switching service could have handled the shipment in road-haul movement into the destination station at equal rate."

Another definition found in the tariff of the Canadian Pacific, Western Lines, having to do with absorption of cartage charges rather than the question of interswitching, concerning competitive carload traffic, reads:—

> "Competitive traffic is defined as having both its origin and destination at points reached by other railroads, which may also be reached by the lines of this company or its connections."

When the agreement was entered into the Canadian National alone was carrying grain from points on the Northern Company to both Victoria and Prince Rupert. The Canadian Pacific had no line to Prince Rupert and while it had

facilities at Victoria it had declined to put in a through rate for export to this point. In fact one of the first applications I heard after becoming a member of the Board was an application to compel the Canadian Pacific to put in such a rate. The company refused to do so, chiefly on the ground that it was too expensive to carry grain to Victoria for export at the rates which would have to be put in. The Canadian Pacific notwithstanding it refused to carry grain to Victoria, now insists that any grain carried there by the Canadian National shall be apportioned under the agreement. In other words, that for every car the Canadian National hauls over its lines to Victoria a car shall be apportioned to the Canadian Pacific for carriage to Vancouver.

It will be seen then that the Canadian National prior to the making of the agreement had certain exclusive rights with regard to the carriage of traffic routed to Victoria or to Prince Rupert. If the contention of the Canadian Pacific is right the Canadian National deliberately abandoned these exclusive rights. I can find nothing in the agreement to justify such a position.

Mr. Tilley based his main argument on clauses 2 and 11 of the agreement. Clause 2 reads as follows:—

> "Each of the parties hereto shall assume the payment of and be liable for one-half of the purchase price payable (with interest) and one-half of the obligations to be assumed by the purchasers under the said Agreement, and shall be entitled to one-half of the benefits to be derived therefrom, it being the intention of the parties that the said Agreement shall be for their equal benefit and advantage."

Clause 11 reads as follows:—

> "The parties agree to co-operate with fairness and candour toward each other, and to give effect to this agreement in the most liberal and reasonable manner to the intent that each of them shall receive its full and equal share of the benefits of the joint undertaking, subject to the provisions of clause 4 hereof."

Referring to the agreement, he said:—

> "The document is clearly one that sets up a sort of partnership arrangement, an agreement to co-operate on certain lines, each company pledging itself to carry out the spirit of the arrangement. As far as could be done in a practical sense there was to be a fifty-fifty arrangement between the two railway companies."

And again:—

> "Then when you look at clause 2 it confirms that view. Each of the parties shall assume the payment of and be liable for one-half of the obligations to be assumed by the purchasers and shall be entitled to one-half the benefits to be derived."

True, under the agreement the parties are to have equal benefits because they are taking equal shares in the new company, but equal benefits in what? Surely the benefits referred to are the benefits to be derived from the operation of the new company. There is nothing in the agreement to suggest that it applies to benefits to be derived from the operation of their own lines apart from the clause which provides for the equal apportionment of outbound traffic destined to competitive points.

I would give the words in the agreement the meaning which those words are ordinarily understood to convey among railway men, and hold that Prince Rupert is not a competitive point within the meaning of the agreement. I hold further that until such time as the Canadian Pacific files a through tariff for export wheat to Victoria, the latter point is not competitive within the meaning of the agreement.

July 11, 1933.

The Assistant Chief Commissioner concurred.

ORDER No. 50139

In the matter of the application of the Canadian National Railways for an inquiry and hearing by the Board and a determination in the matter of a dispute between the Canadian National Railway Company, the Canadian Pacific Railway Company and the Northern Alberta Railways Company in respect of an agreement, dated January 29, 1929, and the provisions of Chapter 48 of the Statutes of Canada, 1929, the dispute arising over the interpretation of the words " and destined via Edmonton or Morinville to competitive points on or beyond the lines of the parties " contained in Clause 7 of the said agreement.

File No. 38702

WEDNESDAY, the 12th day of July, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

Upon hearing the application at the sittings of the Board held at Ottawa, July 4, 1933, in the presence of counsel and representatives for the Canadian National Railways, the Canadian Pacific Railway Company and the Northern Alberta Railways Company, and the arguments of counsel,—

The Board declares, for the reasons set out in the judgment, that Prince Rupert is not a competitive point within the meaning of clause 7 of the agreement, and that, until such time as the Canadian Pacific Railway Company files a through tariff for export wheat to Victoria, the latter point is not competitive within the meaning of the said agreement.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 50079

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act; and Order No. 47229, dated August 5, 1931; Order No. 47488 dated October 6, 1931 and Order No. 47850 dated December 16, 1931:

File No. 34822.13

MONDAY, the 3rd day of July, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Asst. Chief Commissioner.*

The Board orders:

1. That the tolls published in items 3-A, 4, 173 and 299A of Supplement No. 34 to Tariff C.R.C. No. 856, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls for the purpose of reimbursement under subsection 3 of section 9 of the said Act in traffic carried on and after September 23, 1932, under the said items 3-A, 4, 173 and 299A of Supplement No. 34 to tariff C.R.C. No. 856 approved herein are as follows:—

For Item 3-A From	Rates in cents per 100 pounds
Hartville, N.S.	37½
Hantsport, N.S.	40
Horton Landing, N.S.	41½
Port Williams, N.S.	44
Kentville, N.S.	45
Coldbrook, N.S.	49
Berwick, N.S.	50
Kingston, N.S.	52½
Paradise, N.S.	54
Annapolis, N.S.	57½
Hebron, N.S.	59
Yarmouth, N.S.	55
Brooklyn, N.S.	40
Mosherville, N.S.	41½
Clarksville, N.S.	44
Kennetcook, N.S.	45
Mill Village, N.S.	45
Kingsport, N.S.	50
Sheffield Mills, N.S.	49
Bill Town, N.S.	50
Grafton, N.S.	52½
Weston, N.S.	54

For Item 4—The third class rates in effect prior to July 1, 1927.
For Item 173—The tenth class rates in effect prior to July 1, 1927.
For Item 299-A—The fourth class rates in effect prior to July 1, 1927.

3. And the Board further Orders that the said Order No. 47229, dated August 5, 1931, Order No. 47488 dated October 6, 1931, and Order No. 47850 dated December 16, 1931, be and they are hereby rescinded.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 50081

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act:

File No. 34822.13

MONDAY, the 3rd day of July, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Asst. Chief Commissioner.*

The Board orders:

1. That the tolls published in items 245-A and 246 of Supplement No. 30 to Tariff C.R.C. No. 856 filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls for the purpose of reimbursement, under subsection 3 of section 9 of the said Act on traffic carried on and after September 23, 1932, under the said items 245-A and 246 of Supplement No. 30 to Tariff C.R.C. No. 856, approved herein, are as follows:—

For Item 245-A To		Rates in cents per 100 pounds
Halifax, N.S.		21½
Truro, N.S.	Local	24
Truro, N.S.	Furtherance	17½
Wolfville, N.S.		14
Port Williams, N.S.		14
Kentville, N.S.		16½

For Item 246—The first class rates in effect prior to July 1, 1927.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 50084

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act:

File No. 34822.13

MONDAY, the 3rd day of July, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Asst. Chief Commissioner.*

The Board orders:

1. That the tolls published in item 76 of Supplement No. 38 to Tariff C.R.C. No. 856 filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls for the purpose of reimbursement under subsection 3 of section 9 of the said Act on traffic carried on or after September 23, 1932, under the said item 76 of Supplement No. 38 to Tariff C.R.C. No. 856, approved herein, are as follows:—

	Rates in cents per 100 pounds
Less than carloads	35½
Carloads	23

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 50085

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act:

File No. 34822.13

MONDAY, the 3rd day of July, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Asst. Chief Commissioner.*

The Board orders:

1. That the tolls published in item 294 of Supplement No. 49 to Tariff C.R.C. No. 856 filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls for the purpose of reimbursement under subsection 3 of section 9 of the said Act on traffic carried under the said item 294 of Supplement No. 49 to Tariff C.R.C. No. 856, approved herein, are as follows:—

To	Rates in cents per 100 pounds
Aylesford, N.S.	12½
Kentville, N.S.	9
Windsor, N.S.	14

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 50086

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act:

File No. 34822.13

MONDAY, the 3rd day of July, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Asst. Chief Commissioner.*

The Board orders:

1. That the tolls published in items 196 and 198 of Supplement No. 47 to Tariff C.R.C. No. 856 filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll for the purpose of reimbursement under subsection 3 of section 9 of the said Act on traffic carried under the said items 196 and 198 of Supplement No. 47 to Tariff C.R.C. No. 856, approved herein, is 14 cents per 100 pounds.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 50087

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act:

File No. 34822.13

MONDAY, the 3rd day of July, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Asst. Chief Commissioner.*

The Board orders:

1. That the tolls published in item 72 of Supplement No. 42 to Tariff C.R.C. No. 856 filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls for the purpose of reimbursement under subsection 3 of section 9 of the said Act on traffic carried under the said item 72 of Supplement No. 42 to Tariff C.R.C. No. 856, approved herein, are the fourth class rates in effect prior to July 1, 1927.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 50088

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act:

File No. 34822.13

MONDAY, the 3rd day of July, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Asst. Chief Commissioner.*

The Board orders:

1. That the tolls published in item 286-B of Supplement No. 50 to Tariff C.R.C. No. 856 filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls for the purpose of reimbursement under subsection 3 of section 9 of the said Act on traffic carried under the said item 286-B of Supplement No. 50 to Tariff C.R.C. No. 856, approved herein, are the fourth class rates for less than carloads and the seventh class for carloads in effect prior to July 1, 1927.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 50089

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act:

File No. 34822.13

MONDAY, the 3rd day of July, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Asst. Chief Commissioner.*

The Board orders:

1. That the toll published from Truro, N.S. (Ex Amherst, N.S.), in item 198 of Supplement No. 48 to Tariff C.R.C. No. 856 filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll for the purpose of reimbursement under subsection 3 of section 9 of the said Act on traffic carried under the said item 198 of Supplement No. 48 to Tariff C.R.C. No. 856, approved herein, is 15½ cents per 100 pounds.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 50090

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act:

File No. 34822.2

MONDAY, the 3rd day of July, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Asst. Chief Commissioner.*

The Board orders: That the tolls published in Tariff C.R.C. No. 2025, filed by the Canadian National Railways under section 3 of the Maritime Freight Rates Act, be, and they are hereby, approved subject to the provisions of subsection 3 of the said section 3.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 50091

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act; and Order No. 47228, dated August 14, 1931, and Order No. 47614, dated November 5, 1931.

File No. 34822.13

MONDAY, the 3rd day of July, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Asst. Chief Commissioner.*

The Board orders:

1. That the tolls published in items 2, 171 and 262-A of Supplement No. 27 to Tariff C.R.C. No. 856 filed by the Dominion Atlantic Railway Company

under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls for the purpose of reimbursement, under subsection 3 of section 9 of the said Act to apply on traffic carried on and after September 23, 1932, under the said items 2, 171 and 262-A of Supplement No. 27, to Tariff C.R.C. No. 856, approved herein, are as follows:—

For Item 2 From	Rates in cents per 100 pounds
Windsor, N.S.	59
Kentville, N.S.	57½
Kingsport, N.S.	61½
Weston, N.S.	66½
Middleton, N.S.	54
Bridgetown, N.S.	52½
Annapolis, N.S.	50
Clementsport, N.S.	49
Bear River, N.S.	45
Digby, N.S.	44
Bloomfield, N.S.	41½
Plymton, N.S.	39
Weymouth, N.S.	35
Church Point, N.S.	34
Little Brook, N.S.	31½
Parker Eakins Siding, N.S.	27½
Sigogne, N.S.	26½
Hectanooga, N.S.	22½
Brazil Lake, N.S.	21½

For Item 171—The third class rates in effect prior to July 1, 1927.

For Item 262-A—Less carloads, the 6th class rates, carloads the 10th Class rates in effect prior to July 1, 1927.

3. And the Board further orders that the said Order No. 47228, dated August 14, 1931, and Order No. 47614, dated November 5, 1931, be, and they are hereby, rescinded.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 50092

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act:

File No. 34822.13

MONDAY, the 3rd day of July, A.D. 1933.

HON. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Asst. Chief Commissioner.*

The Board orders:

1. That the toll published in item 289 of Supplement No. 45 to Tariff C.R.C. No. 856 filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll for the purpose of reimbursement under subsection 3 of section 9 of the said Act on traffic carried under the said item 289 of Supplement No. 45 to Tariff C.R.C. No. 856, approved herein, is 27 cents per 100 pounds.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 50080

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act:

File No. 34822.13

TUESDAY, the 4th day of July, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*

S. J. MCLEAN, *Asst. Chief Commissioner.*

The Board orders:

1. That the toll published from Truro, N.S. (Ex Fort Lawrence, N.S.), in item 198-A of Supplement No. 54 to Tariff C.R.C. No. 856 filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll for the purpose of reimbursement under subsection 3 of section 9 of the said Act on traffic carried under the said item 198-A of Supplement No. 54 to Tariff C.R.C. No. 856 approved herein is 15½ cents per 100 pounds.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 50082

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act:

File No. 34822.13

TUESDAY, the 4th day of July, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*

S. J. MCLEAN, *Asst. Chief Commissioner.*

The Board orders:

1. That the toll published in item 127-B of Supplement No. 55 to Tariff C.R.C. No. 856 filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll for the purpose of reimbursement under subsection 3 of section 9 of the said Act on traffic carried under the said item 127-B of Supplement No. 55 to Tariff C.R.C. No. 856 approved herein is 10 cents per 100 pounds.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 50083

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act:

File No. 34822.13

TUESDAY, the 4th day of July, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Asst. Chief Commissioner.*

The Board orders:

1. That the toll published in item 112 of Supplement No. 53 to Tariff C.R.C. No. 856 filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll for the purpose of reimbursement under subsection 3 of section 9 of the said Act on traffic carried under the said item 112 of Supplement No. 53 to Tariff C.R.C. No. 856 approved herein is 4 cents per 100 pounds.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 50105

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act:

File No. 34822.13

TUESDAY, the 4th day of July, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Asst. Chief Commissioner.*

The Board orders:

1. That the tolls published in Supplement No. 6 to Tariff C.R.C. No. 804, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved subject to the provisions of subsection 3 of section 3 of the said Act.

The Dominion Atlantic Railway proportion to be reported as follows:—

To	Cents per 100 pounds
St. Bazil, N.B.	4.4
Edmundston, N.B.	4.6
Fredericton, N.B.	4.68
South Devon, N.B.	4.68

2. And the Board hereby certifies that the Dominion Atlantic Railway proportion of the normal tolls for the purpose of reimbursement under subsection 3 of section 9 of the said Act on traffic carried under the said Supplement No. 6 to Tariff C.R.C. No. 804, approved herein, are as follows:—

To	Cents per 100 pounds
St. Bazil, N.B.	5.5
Edmundston, N.B.	5.75
Fredericton, N.B.	5.85
South Devon, N.B.	5.85

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 50106

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act: File No. 34822.13

TUESDAY, the 4th day of July, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Asst. Chief Commissioner.*

The Board orders:

1. That the tolls published in item 101 of Supplement No. 40 to Tariff C.R.C. No. 856, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls for the purpose of reimbursement under subsection 3 of section 9 of the said Act on traffic carried under the said item 101 of Supplement No. 40 to Tariff C.R.C. No. 856, approved herein, are the third class rates in effect prior to July 1, 1927.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 50107

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act: File No. 34822.13

TUESDAY, the 4th day of July, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Asst. Chief Commissioner.*

The Board orders:

1. That the tolls published in Tariff C.R.C. No. 868, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls for the purpose of reimbursement under subsection 3 of section 9 of the said Act on traffic carried under the said Tariff C.R.C. No. 868, from September 23, to December 31, 1932, are as follows:—

To	Rates in cents per 100 pounds unless otherwise stated: Bars, iron or steel to zinc, plate or sheet inclusive, groceries and hardware classifying third and fourth class.	Dried fruits, groceries, and hardware classifying first and second class.
Beaver Bank, N.S. Mount Uniacke, N.S.	12½	16½
Ellershouse, N.S. Newport, N.S.	15	20
Windsor, N.S. Hantsport, N.S. Wolfville, N.S. Port Williams, N.S.	19	25
Kentville, N.S. Canning, N.S. Kingsport, N.S.	21½	29
Billtown, N.S. Weston, N.S. Waterville, N.S. Aylesford, N.S. Kingston, N.S. Middleton, N.S.	24	31½
Lawrencetown, N.S. Bridgetown, N.S.	25	32½

To	Rates in cents per 100 pounds unless otherwise stated Petroleum products	Fresh fruits	Molasses per cask
Beaver Bank, N.S. Mount Uniacke, N.S.	12½	20	$2.15
Ellershouse, N.S. Newport, N.S.	15	25	2.65
Windsor, N.S. Hantsport, N.S. Wolfville, N.S. Port Williams, N.S.	—	31½	3.00
Kentville, N.S. Canning, N.S. Kingsport, N.S.	—	36½	3.25
Billtown, N.S. Weston, N.S. Waterville, N.S. Aylesford, N.S. Kingston, N.S. Middleton, N.S.	—	39	4.00
Lawrencetown, N.S. Bridgetown, N.S.	—	41½	4.25

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 50123

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act. File No. 34822.13

TUESDAY, the 4th day of July, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the tolls published in Tariff C.R.C. 869, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls for the purpose of reimbursement under subsection 3 of section 9 of the said Act carried under the said Tariff C.R.C. No. 869 on and after September 23, 1932, are as follows:—

To	Rates in cents per 100 lbs. Bars, Iron or Steel to Zinc Plate or Sheet, Groceries and Hardware classifying third and fourth class	Dried Fruits, Groceries and Hardware, classifying first and second class, except Dried Fruits to Meteghan and North Range, N.S.
Brazil Lake, N.S.	9	15
Hectanooga, N.S.	10	16½
Meteghan, N.S. Blackadars, N.S.	12½	20
Saulnierville, N.S. Little Brook, N.S.	12½	22½
Church Point, N.S. Weymouth, N.S.	14	25
Plympton, N.S.	17½	27½
North Range, N.S. Bloomfield, N.S.	17½	30
Digby, N.S.	19	31½
Bear River, N.S.	20	32½
Clementsport, N.S.	21½	35
Annapolis Royal, N.S.	21½	36½
Bridgetown, N.S.	22½	37½
Middleton, N.S.	24	39

Dried Fruits To	
Meteghan, N.S.	19½ cents per 100 lbs.
North Range, N.S.	29 cents per 100 lbs.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 50098

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act:

File No. 34822.13

THURSDAY, the 6th day of July, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Asst. Chief Commissioner.*

The Board orders:

1. That the toll published in Tariff C.R.C. No. 886, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved subject to the provisions of subsection 3 of section 3 of the said Act; the Dominion Atlantic Railway proportion to be reported at 18.4 cents per 100 pounds.

2. And the Board hereby certifies that the Dominion Atlantic Railway proportion of the normal toll for the purpose of reimbursement under subsection 3 of section 9 of the said Act on traffic carried under the said Tariff C.R.C. No. 886, approved herein, is 23 cents per 100 pounds.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 50099

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act:

File No. 34822.13

THURSDAY, the 6th day of July, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Asst. Chief Commissioner.*

The Board orders:

1. That the toll published in Tariff C.R.C. No. 885, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll for the purpose of reimbursement under subsection 3 of section 9 of the said Act on traffic carried under the said Tariff C.R.C. No. 885, approved herein, is 21 cents per 100 pounds.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 50100

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act:

File No. 34822.13

THURSDAY, the 6th day of July, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*

S. J. MCLEAN, *Asst. Chief Commissioner.*

The Board orders:

1. That the tolls published in Tariff C.R.C. No. 883, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls for the purpose of reimbursement under subsection 3 of section 9 of the said Act on traffic carried under the said Tariff C.R.C. No. 883, approved herein, are as follows:—

Rates in cents per 100 pounds

Column A	Column B
36½	34

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 50101

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act:

File No. 34822.13

THURSDAY, the 6th day of July, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*

S. J. MCLEAN, *Asst. Chief Commissioner.*

The Board orders:

1. That the tolls published in Tariff C.R.C. No. 882, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls for the purpose of reimbursement under subsection 3 of section 9 of the said Act on traffic carried under the said Tariff C.R.C. No. 882, approved herein, are as follows:—

Rates in cents per 100 pounds

Lake and Rail	All Rail
47	52½

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 50102

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act:

File No. 34822.13

THURSDAY, the 6th day of July, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*

S. J. MCLEAN, *Asst. Chief Commissioner.*

The Board orders:

1. That the toll published in Tariff C.R.C. No. 881, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll for the purpose of reimbursement under subsection 3 of section 9 of the said Act on traffic carried under the said Tariff C.R.C. No. 881, approved herein, is 22½ cents per 100 pounds.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 50103

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act:

File No. 34822.13

THURSDAY, the 6th day of July, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*

S. J. MCLEAN, *Asst. Chief Commissioner.*

The Board orders:

1. That the tolls published in Tariff C.R.C. No. 878, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls for the purpose of reimbursement under subsection 3 of section 9 of the said Act on traffic carried under the said Tariff C.R.C. No. 878, approved herein, are as follows:—

To	Rates in cents per 100 pounds
Sherbrooke, Que.	26
Farnham, Que.	
St. Johns, Que.	
Montreal, Que.	
Ottawa, Ont.	26½
Toronto, Ont.	35

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 50104

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act:

File No. 34822.13

THURSDAY, the 6th day of July, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Asst. Chief Commissioner.*

The Board orders:

1. That the tolls published in Tariff C.R.C. No. 876, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls for the purpose of reimbursement under subsection 3 of section 9 of the said Act on traffic carried under the said Tariff C.R.C. No. 876, approved herein, are as follows:—

To	Rates in cents per 100 pounds
Sherbrooke, Que.	26
Farnham, Que.	
St. Johns, Que.	
Montreal, Que.	
St. Eustache, Que.	29
Ottawa, Ont.	29½

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 50125

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act:

File No. 34822.2

THURSDAY, the 6th day of July, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Asst. Chief Commissioner.*

The Board orders: That the tolls published in Supplement No. 38 to Tariff C.R.C. No. E-1234, filed by the Canadian National Railways under section 3 of the Maritime Freight Rates Act, be, and they are hereby, approved subject to the provisions of subsection 3 of the said section 3.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 50117

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13

THURSDAY, the 6th day of July, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the tolls published in Tariff C.R.C. No. 887, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act,

be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act. The Dominion Atlantic Railway Company's proportion to be reported at 9·5 cents per 100 pounds.

2. And the Board hereby certifies that the Dominion Atlantic Railway Company's proportions of the normal tolls for purpose of reimbursement under subsection 3 of section 9 of the said Act on traffic carried under the said Tariff C.R.C. No. 887 are as follows:—

On	Rates in cents per 100 pounds
Mineral water	11.8
Empty bottles	11.8

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 50119

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13

THURSDAY, the 6th day of July, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the toll published to Bridgetown, N.S., in item 75A of Supplement No. 2 to Tariff C.R.C. No. 866, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll for the purpose of reimbursement under subsection 3 of section 9 of the said Act to apply on traffic carried under the said item 75A of Supplement No. 2 to Tariff C.R.C. No. 866, approved herein, is 12 cents per 100 pounds.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 50124

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13

THURSDAY, the 6th day of July, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the tolls published in item 165 of Tariff C.R.C. No. 866, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls for the purpose of reimbursement under subsection 3 of section 9 of the said Act on traffic carried under the said item 165 of Tariff C.R.C. No. 866, approved herein, are as follows:—

From	To	Rates in cents per 100 lbs. Less than Carloads	Carloads
Truro, N.S.	Middleton, N.S.	30½	18
	Bridgetown, N.S.	32½	19
	Yarmouth, N.S.	40	24
Halifax, N.S.	Middleton, N.S.	27½	15½
	Bridgetown, N.S.	30½	18
	Yarmouth, N.S.	36½	22

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 50116

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act; and Order No. 47489, dated October 6, 1931.

File No. 34882.13

FRIDAY, the 7th day of July, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the tolls published in Supplement No. 1 to Tariff C.R.C. No. 858, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls for the purpose of reimbursement under subsection 3 of section 9 of the said Act on traffic carried under the said Supplement No. 1 to Tariff C.R.C. No. 858, approved herein, are as follows:—

From	Rates in cents per barrel
Paradise, N.S.	20
Lawrencetown, N.S.	19
Middleton, N.S.	17½
Wilmot, N.S.	15
Kingston, N.S.	14
Auburn, N.S.	14
Aylesford, N.S.	14
Berwick, N.S.	13
Waterville, N.S.	13½
Cambridge, N.S.	13½

3. And the Board furthers orders that the said Order No. 47489, dated October 6, 1931, be, and the same is hereby, rescinded.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 50118

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13

FRIDAY, the 7th day of July, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the tolls published in Tariff C.R.C. No. 884, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls for the purpose of reimbursement under subsection 3 of section 9 of the said Act on traffic carried under the said Tariff C.R.C. No. 884, approved herein, are as follows:—

To	Rates in cents per 100 lbs. Minimum weight 30,000 lbs.	Minimum weight 60,000 lbs.	Minimum weight 80,000 lbs.
Belleville Ont.	...	34½	32½
Brantford, Ont.	...	37	34½
Brockville, Ont.	...	34	31½
Cornwall, Ont.	...	34	31½
Hamilton, Ont.	...	34	32
Kingston, Ont.	...	33½	31
Lindsay, Ont.	...	41	39
London, Ont.	...	37½	35
Montreal, Que.	...	32	26½
Oshawa, Ont.	...	34½	32
Ottawa, Ont.	...	38½	36½
Peterboro, Ont.	...	41½	39½
Quebec, Que.	...	30½	26½
St. Catharines, Ont.	...	34	31½
Sarnia, Ont.	...	37	35
Sault Ste. Marie, Ont.	...	36½	34½
Smiths Falls, Ont.	42½	—	—
Trois Rivieres, Que.	...	32½	27½
Toronto, Ont.	...	34½	32

1½ cents per 100 lbs. to be deducted from the above tolls, account of water haul.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 50120

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13

FRIDAY, the 7th day of July, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the tolls published to Windsor, Ontario, in Tariff C.R.C. No. 889, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls for the purpose of reimbursement under subsection 3 of section 9 of the said Act on traffic carried under the said Tariff C.R.C. No. 889, approved herein, are as follows:—

	Rates in cents per 100 pounds
Minimum weight (60,000 lbs.)	37
Minimum weight (80,000 lbs.)	35

1½ cents per 100 lbs. to be deducted from the above tolls, account of water haul.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 50121

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13

FRIDAY, the 7th day of July, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the toll published in item 19 of Supplement No. 11 to Tariff C.R.C. No. 819, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll for the purpose of reimbursement under subsection 3 of section 9 of the said Act on traffic carried under the said item 19 of Supplement No. 11 to Tariff C.R.C. No. 819, approved herein, is 37½ cents per 100 pounds.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 50122

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13

FRIDAY, the 7th day of July, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the toll published in tariff C.R.C. No. 888, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll for the purpose of reimbursement under subsection 3 of section 9 of the said Act on traffic carried under the said Tariff C.R.C. No. 888, approved herein, is 35½ cents per 100 pounds; 1½ cents per 100 pounds to be deducted account of water haul.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 50128

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act; and Order No. 44205, dated January 17, 1930.

File No. 34822.12

FRIDAY, the 7th day of July, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*

S. J. MCLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the toll published in from Group 2 to Megantic, Quebec, in item 83B of Supplement No. 20 to Tariff C.R.C. No. E-4310, filed by the Canadian Pacific Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll for the purpose of reimbursement under subsection 3 of section 9 of the said Act on traffic carried to Megantic, Quebec, under the said item 83B of Supplement No. 20 to Tariff C.R.C. No. E-4310, is 22½ cents per 100 pounds.

3. And the Board further orders that the normal toll named into Megantic in Order No. 44205, dated January 17, 1930, be, and the same is hereby, rescinded.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 50132

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.12

FRIDAY, the 7th day of July, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*

S. J. MCLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the toll published in item 84 of Supplement No. 23 to Tariff C.R.C. No. E-4310, filed by the Canadian Pacific Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll for the purpose of reimbursement under subsection 3 of section 9 of the said Act on traffic carried on and after September 23, 1932, under the said item 84 of Supplement No. 23 to Tariff C.R.C. No. E-4310, approved herein, is 17 cents per 100 pounds.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 50111

In the matter of tariffs and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act. File No. 34822.12

SATURDAY, the 8th day of July, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the toll published in item 192 of Supplement No. 26 to Tariff C.R.C. No. E-4572, filed by the Canadian Pacific Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll for the purpose of reimbursement under subsection 3 of section 9 of the said Act on traffic carried on and after September 23, 1932, under the said item 192 of Supplement No. 26 to Tariff C.R.C. No. E-4572, approved herein, is 18 cents per 100 pounds.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 50112

In the matter of tariffs and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act; and Order No. 48787, dated June 27, 1932. File No. 34822.12

SATURDAY, the 8th day of July, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the toll published in item 32 of Supplement No. 4 to Tariff C.R.C. No. E-4370, filed by the Canadian Pacific Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll for the purpose of reimbursement under subsection 3 of section 9 of the said Act on traffic carried under the said item 32 of Supplement No. 4 to Tariff C.R.C. No. E-4370, approved herein, is $1.19½ per 100 pounds.

3. And the Board further orders that the said Order No. 48787, dated June 27, 1932, be, and the same is hereby, rescinded.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 50113

In the matter of tariffs and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.12

SATURDAY, the 8th day of July, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the toll published in item 407 of Supplement No. 3 to Tariff C.R.C. No. E-4370, filed by the Canadian Pacific Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll for the purpose of reimbursement under subsection 3 of section 9 of the said Act on traffic carried under the said item 407 of Supplement No. 3 to Tariff C.R.C. No. E-4370, approved herein, is $1.62½ per 100 pounds.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 50114

In the matter of tariffs and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.12

SATURDAY, the 8th day of July, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*

S. J. MCLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the tolls published from Group "H" in Supplement No. 20 to Tariff C.R.C. No. E-4322, filed by the Canadian Pacific Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls for the purpose of reimbursement under subsection 3 of section 9 of the said Act on traffic carried under Group "H" rates of the said Supplement No. 20 to Tariff C.R.C. No. E-4322, approved herein, are those certified as normal tolls for Group "B" rates in the Board's Order No. 49557, dated February 17, 1933.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 50115

In the matter of tariffs and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.12

SATURDAY, the 8th day of July, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*

S. J. MCLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the tolls published in Tariff C.R.C. No. E-4590, filed by the Canadian Pacific Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls for the purpose of reimbursement under subsection 3 of section 9 of the said Act on traffic carried on and after September 23, 1932, under the said Tariff C.R.C. No. E-4590, approved herein, are as follows:—

To	Rates in cents per 100 pounds
Belleville, Ont.	34
Brockville, Ont.	33
Fort William, Ont. (Lake and Rail)	37
Hamilton, Ont.	33
Kingston, Ont.	32½
London, Ont.	36½
Montreal, Que.	30½
Ottawa, Ont.	37½
Quebec, Que.	30½
Port Arthur, Ont. (Lake and Rail)	37
Riviere du Loup, Que.	30
St. Catharines, Ont.	33
Sarnia, Ont.	36½
Sault Ste. Marie, Ont.	36
Sorel, Que.	27½
Thorold, Ont.	33
Toronto, Ont.	33½
Trois Rivieres, Que.	31
Windsor, Ont.	36½

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 50127

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.12

SATURDAY, the 8th day of July, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*

S. J. MCLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the toll published to Fairville, New Brunswick, from stations Youngs Cove, New Brunswick, to Annidale, New Brunswick, inclusive, and from Scotch Settlement, New Brunswick, and Belleisle, New Brunswick, also the tolls published from Group H to New York Central Railway stations in Supplement No. 17 to Tariff C.R.C. No. E-4322, filed by the Canadian Pacific Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll for the purpose of reimbursement under subsection 3 of section 9 of the said Act on traffic carried under the said Supplement No. 17 to Tariff C.R.C. No. E-4322, approved herein, is 9 cents per 100 pounds to Fairville, New Brunswick, and 29 cents per 100 pounds from Group H.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 50152

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.12

SATURDAY, the 8th day of July, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the toll published in item 155 of Supplement No. 3 to Tariff C.R.C. No. E-4632, filed by the Canadian Pacific Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll for the purpose of reimbursement under subsection 3 of section 9 of the said Act on traffic carried under the said item 155 of Supplement No. 3 to Tariff C.R.C. No. E-4632, approved herein, is 14½ cents per 100 pounds.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 50146

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.12

SATURDAY, the 8th day of July, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the toll published to Edmundston, N.B., in item 380A of Supplement No. 6 to Tariff C.R.C. No. E-4632, filed by the Canadian Pacific Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll for the purpose of reimbursement under subsection 3 of section 9 of the said Act on traffic carried under the said item 380A of Supplement No. 6 to Tariff C.R.C. No. E-4632, approved herein, is 33 cents per 100 pounds.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 50147

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act; and Order No. 42149, dated February 5, 1929, and Order No. 44174, dated January 13, 1930.

File No. 34822.12

SATURDAY, the 8th day of July, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the tolls published in items 45A, 50A and 60A of Supplement No. 8 to Tariff C.R.C. No. E-4314, filed by the Canadian Pacific Railway Company

under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls for the purpose of reimbursement under subsection 3 of section 9 of the said Act on traffic carried under the said items 45A, 50A and 60A of Supplement No. 8 to Tariff C.R.C. No. E-4314, approved herein, are as follows:—

Item 45A To	Rates in cents per 100 pounds
Belleville, Ont.	42
Brantford, Ont.	47½
Brockville, Ont.	36
Chatham, Ont.	52
Cornwall, Ont.	37
Galt, Ont.	47½
Guelph, Ont.	45½
Hamilton, Ont.	44½
Ingersoll, Ont.	49½
Kingston, Ont.	39½
Kitchener, Ont.	47½
London, Ont.	49
Montreal, Que.	32½
Niagara Falls, Ont.	45
Orillia, Ont.	48½
Paris, Ont.	47½
Peterboro, Ont.	42½
Port Dalhousie, Ont.	45
Prescott, Ont.	36
Quebec, Que.	28½
St. Catharines, Ont.	45
Toronto, Ont.	41½
Trenton, Ont.	42
Victoria, Park, Ont.	45
Walkerville, Ont.	52
Windsor, Ont.	52
Woodstock, Ont.	47½
Item 50A	
Saint John, N.B., to Brantford, Ont.	56
Item 60A	36½

3. And the Board hereby further orders that said Order No. 42149, dated February 5, 1929, and Order No. 44174, dated January 13, 1930, be, and the same are hereby, rescinded.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 50148

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.12

SATURDAY, the 8th day of July, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the tolls published to the Hereford Subdivision and to Midland, Ont., in Supplement No. 6 to Tariff C.R.C. No. E-4322, filed by the Canadian Pacific Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are herby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls for the purpose of reimbursement under subsection 3 of section 9 of the said Act on traffic carried under the said Supplement No. 6 to Tariff C.R.C. No. E-4322, approved herein, are to Hereford Subdivision stations the rates to Sherbrooke, P.Q., and to Midland, Ont., the rates to Port McNicoll, Ont., published in Canadian Pacific Railway Tariff C.R.C. No. E-4203.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 50149

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act; and Order No. 47023, dated July 4, 1931.

File No. 34822.15

SATURDAY, the 8th day of July, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*

S. J. MCLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the toll of $1.30 per ton published to Edmundston,N.B., in Supplement No. 13 to Tariff C.R.C. No. 160, filed by the Fredericton and Grand Lake Coal and Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll for the purpose of reimbursement under subsection 3 of section 9 of the said Act on traffic carried under the said Supplement No. 13 to Tariff C.R.C. No. 160, approved herein, is $1.65 per ton.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 50140

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13

MONDAY, the 10th day of July, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*

S. J. MCLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the tolls published in Supplement No. 1 to Tariff C.R.C. No. 874, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls for the purpose of reimbursement under subsection 3 of section 9 of the said Act on traffic carried

from September 23, 1932, to January 18, 1933, inclusive, under the said Supplement No. 1 to Tariff C.R.C. No. 874, approved herein, are as follows:—

From	Rates in cents per barrel
Ellershouse, N.S.	12½
Windsor, N.S.	
Falmouth, N.S.	12½
Hantsport, N.S.	
Avonport, N.S.	12½
Port Williams, N.S.	
Kentville, N.S.	14
Coldbrook, N.S.	15½
Berwick, N.S.	
Aylesford, N.S.	17½
Kingston, N.S.	
Wilmot N.S.	20
Annapolis Royal, N.S.	
Clementsport, N.S.	22
Digby, N.S.	
North Range, N.S.	22½
Yarmouth, N.S.	
Brooklyn, N.S.	12½
Masherville, N.S.	
Clarksville, N.S.	14
Kennetcook, N.S.	
Patterson's, N.S.	15½
Burton's, N.S.	
South Maitland, N.S.	17½
Clifton, N.S.	
Lower Truro, N.S.	17½
Mill Village, N.S.	15½
Kingsport, N.S.	
Billtown, N.S.	15½
Grafton, N.S.	
Somerset, N.S.	17½
Weston, N.S.	

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 50141

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13

MONDAY, the 10th day of July, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*

S. J. MCLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the toll published in Tariff C.R.C. No. 870, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll for the purpose of reimbursement under subsection 3 of section 9 of the said Act on traffic carried under the said Tariff C.R.C. No. 870, approved herein, is 24 cents per 100 pounds, 1½ cents per 100 pounds to be deducted account of water haul.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 50142

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13

MONDAY, the 10th day of July, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the tolls published in Tariff C.R.C. No. 877, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls for the purpose of reimbursement under subsection 3 of section 9 of the said Act on traffic carried under the said Tariff C.R.C. No. 877, approved herein, are the third and fifth class rates in effect prior to July 1, 1927.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 50144

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act; and Order No. 49294, dated December 10, 1932.

File No. 34822.13

MONDAY, the 10th day of July, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the tolls published in Tariff C.R.C. No. 875, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls for the purpose of reimbursement under subsection 3 of section 9 of the said Act on traffic carried under the said Tariff C.R.C. No. 875, approved herein, are those published in Dominion Atlantic Railway Tariff C.R.C. No. 670 except from points in the North Mountain Branch, the normal tolls for which are as follows:—

	Rates in cents per barrel	
	Less than carload	Carload
Billtown, N.S.	45	34½
Lakeville, N.S.		
Oyler's Siding, N.S.		
Woodville, N.S.		
Grafton, N.S.		
Somerset, N.S.	46½	35½
Weston, N.S.		

3. And the Board further orders that the said Order No. 49294, dated December 10, 1932, be, and the same is hereby, rescinded.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 50145

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.12

MONDAY, the 10th day of July, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the tolls to Quebec, P.Q., published in item 90 of Tariff C.R.C. No. E-4645, filed by the Canadian Pacific Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls for the purpose of reimbursement under subsection 3 of section 9 of the said Act on traffic carried to Quebec, P.Q., under the said item 90 of Tariff C.R.C. No. E-4645, approved herein, are as follows:—

	Rates in cents per 100 pounds
Group 1	21½
Group 2	25½

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 50155

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.2

WEDNESDAY, the 12th day of July, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

The Board orders: That the tolls published in Supplement No. 20 to Tariff C.R.C. No. E-1238; Supplement No. 19 to Tariff C.R.C. No. E-1241; and Tariff C.R.C. No. E-2029, filed by the Canadian National Railways under section 3 of the Maritime Freight Rates Act, be, and they are herby approved, subject to the provisions of subsection 3 of the said section 3.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 50157

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.12

WEDNESDAY, the 12th day of July, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the toll published in item 1072 of Supplement No. 12 to Tariff C.R.C. No. E-4632, filed by the Canadian Pacific Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll for the purpose of reimbursement under subsection 3 of section 9 of the said Act on traffic carried under the said item 1072 of Supplement No. 12 to Tariff C.R.C. No. E-4632, approved herein, is 7½ cents per 100 pounds.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 50143

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Martime Freight Rates Act; and Order No. 50079, dated July 3, 1933.

File No. 34822.13

WEDNESDAY, the 12th day of July, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

Upon its appearing that the tolls published in item 3A of Supplement No. 34 to Tariff C.R.C. No. 856, filed by the Dominion Atlantic Railway Company, are shown "per barrel,"—

The Board orders: That the heading for normal tolls for the said item 3A in the said Order No. 50079, dated July 3, 1933, now reading "Rates in cents per 100 pounds" be deleted, and in lieu thereof the words "Rates per barrel" be substituted.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 50153

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act; and Order No. 50103, dated July 6, 1933.

File No. 34822.13

THURSDAY, the 13th day of July, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the tolls published in Tariff C.R.C. No. 878, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls for the purpose of reimbursement under subsection 3 of section 9 of the said Act on traffic carried under the said Tariff C.R.C. No. 878, approved herein, are as follows:—

To	Rates in cents per 100 pounds
Shebrooke, Que.	26
Farnham, Que.	
St. Johns, Que.	
Montreal, Que.	
Ottawa, Ont.	29½
Toronto, Ont.	35

3. And the Board further orders that the said Order No. 50103, dated July 6, 1933, be, and the same is hereby, rescinded.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 50156

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.2

FRIDAY, the 14th day of July, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

The Board orders: That the tolls published in Supplement No. 14 to Tariff C.R.C. No. E-1702, and Supplement No. 16 to Tariff C.R.C. No. E-1804, filed by the Canadian National Railways under section 3 of the Maritime Freight Rates Act, be, and they are herby, approved, subject to the provisions of subsection 3 of the said section 3.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 50158

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.14

FRIDAY, the 14th day of July, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the tolls published to Trois Rivières, P.Q., via Route No. 2 in Tariff C.R.C. No. 691, filed by the Temiscouata Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that for the purpose of reimbursement under subsection 3 of section 9 of the said Act, the Temiscouata Railway Company's proportion is to be reported as shown in column 1, and normal tolls as shown in column 2:—

Via Route No. 2	From Group A Cents per 100 pounds Column 1	Group A Column 2	Group B Column 1	Group B Column 2
Trois Rivieres, Que.	5	6½	7	9

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 50165

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.2

TUESDAY, the 18th day of July, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

The Board orders: That the tolls published in Supplement No. 16 to Tariff C.R.C. No. E-1256, Supplement No. 10 to Tariff C.R.C. No. E-1829, and Supplement No. 4 to Tariff C.R.C. No. E-1911, filed by the Canadian National Railways under section 3 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

C. P. FULLERTON,
Chief Commissioner.

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DEC 4 1935

The Board of

Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

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This publication is issued fortnightly, on the 1st and 15th of each month. Annual subscription, $3.00; single numbers, 20 cents; in quantities, 25 per cent discount. Remittances should be made to the King's Printer, Ottawa, by postal money order, express order or accepted cheque. The use of currency for this purpose is contrary to the advice of the postal authorities and entails a measure of risk. Postage stamps, foreign money or uncertified cheques will not be accepted. No extra charge is made for postage on documents forwarded to points in Canada and in the United States, but cost of postage is added to the selling price when documents are mailed to other countries. Early application should be made for copies in quantities. Subscriptions should be sent, in every case, to the King's Printer, Ottawa.

Application of the Kotex Company of Canada, Limited, Niagara Falls, Ontario, for a ruling of the Board concerning the application of Items 360 and 360-A of Canadian Freight Association Tariff C.R.C. No. 466, on L.C.L. shipments of a product known by the trade name of Kleenex from Niagara Falls, Ontario, to British Columbia coast points.

File 37084.3

By the Board:

The applicant and the Canadian Freight Association (on behalf of the railways) filed written submissions setting out their contentions respecting the matter at issue and requested that the Board issue a ruling upon such submissions and without a public hearing.

The point in issue involves a question of tariff interpretation with respect to L.C.L. shipments of Kleenex made from Niagara Falls, Ontario, to British Columbia coast points prior to the publication of item 225 in Supplement No. 20 to Canadian Freight Association Tariff C.R.C. No. 466, effective January 16, 1933.

The tariff in question publishes competitive westbound transcontinental freight rates on various specifically named commodities from Eastern Canadian points of origin to British Columbia coast destinations. A rule in the tariff provides: "Rates on commodities named in this tariff are specific and must not be applied on analogous articles. Articles for which commodity rates are not specifically provided in this tariff will be subject to class rates governed by the current Canadian Freight Classification."

Item 225, already referred to, under which shipments are now handled, reads: "Cellulose Napkins, Neck Strips, Towels, Handkerchiefs, Wadding and Sanitary Pads." Applicant contends that shipments moving prior to the establishment of this item are covered by items 360 and 360A, which is an item with the general heading "Dry Goods" and then enumerates numerous articles including:—

"Towelling } other than Cotton,"
"Towels }

and it is these words the applicant relies upon as proving title to the rate published in this item on these shipments.

The railway companies contend that the rate in the dry goods item applies only on towels made of cloth properly coming under the designation of dry goods and, as there was no other specific item in the tariff covering, they charged the higher class rate governed by the Canadian Freight Classification. They state the question of the classification rating to apply on cellulose products was first brought to their attention in 1928, in connection with a shipment described as cellulose napkins; that as there was no specific item in the Classification to cover such articles, they issued a Ruling Circular as instructions to agents reading as follows:—

> " Cleansing Tissue:
>
> " Cleansing Tissue also known as Kleenex, such as shipped by Pond's Extract Company, which is used for removing cold cream, is subject to ratings established on Paper Goods, N.O.I.B.N."

This provided for the acceptance of such goods as analogous to paper articles N.O.I.B.N., in accordance with the Classification rule (No. 21), regarding acceptance of articles not classified at the ratings provided for analogous articles. Subsequently there has been included in the Classification a specific item to cover these products reading:—

> " Cellulose Handkerchiefs, Napkins, Neck Strips, Towels or Wadding, N.O.I.B.N., in boxes, bundles or wrapped rolls."

The L.C.L. rating chargeable under the present specific item is the same as these goods were carried under by the previous instructions to agents, namely 1st class.

Applicant refers to the traffic being carried under the provisions of the instructions to agents and using this description in making shipments until the effective date of the specific classification item and states that during the time from their request for a specific item in the Classification and the effective date thereof, there had been no change in the construction of the commodity; that by the wilful publication of the specific item, the Classification Committee recognized the error of their ruling in 1928; that " upon this commitment of the committee we feel that we the shippers were overcharged on certain shipments (to be explained later) account of specific commodity rates in effect at time these certain shipments moved, for a change in a commodity description with no change in the commodity itself should certainly be retroactive. Overcharge claims were filed and declined by defendant carriers." We do not see any point or force to the applicant's contention on this point in its relation to the matter at issue, which is not a question of the classification provision, but the interpretation of the specific tariff item. The two matters are distinct and the provision in the classification has, in our view, no bearing whatever on the interpretation of the tariff item. If applicant's interpretation of the tariff item is correct, it matters not what the classification description is.

Applicant contends items 360 and 360A apply on shipments of Kleenex. It sets out:—

First, the item provides rates on towels manufactured from any material other than cotton.

Second, specific commodity rates take precedence over class rates.

Third, carriers have no authority to assess tolls other than those provided for in tariffs filed with the Board.

Fourth, tariffs are to speak for themselves and the intent of the framers of the tariff has no effect, unless it is conveyed in the language used in the tariff. Ambiguity in tariffs is to be construed in favour of the shipper.

Briefly commenting on the above points seriatim, it may be stated:—

First, the item does not say " any materials other than cotton "; it reads " towels other than cotton." The necessity for the words " other than cotton " is obvious, because, in another item in the same tariff (350), there is a specific provision and a lower rate applying on " towels made wholly of cotton "; hence

the necessity for the words used in item 360 to distinguish from the provision made in item 350.

Second, this is correct, except that the latter cannot be exceeded.

Third, this is correct.

Fourth, the following citation from the Board's Judgment in the application of Dome Mines, Limited, Volume 23, Board's Judgments, Orders, Regulations and Rulings, page 54, is relevant here:—

> "This Board, as well as the Interstate Commerce Commission, has held that any doubt as to the meaning of a tariff should be construed against the party responsible for having such tariff in effect; that the intention of the framers of the tariff is not controlling and they are to be construed according to the language used, but we also take the same view as the Interstate Commerce Commission, namely, that:
>
> "'Although doubt as to the meaning of a tariff must be resolved in favour of the shipper and against the carrier which compiled it, the doubt must be a reasonable one and the terms of a tariff must be taken in the sense in which they are generally understood and accepted commercially. All of the pertinent provisions of a tariff must be considered together, and if those provisions may be said to express the intention of the framers under a fair and reasonable construction, that intention must be given effect.' 118 I.C.C., 186; 161, I.C.C., 77."

Neither carriers nor shippers can be permitted to urge for their own purposes, a strained and unnatural construction. Concerning the terms of this tariff, as they have been generally understood and accepted commercially, it seems very clear from this record that for approximately five years the applicant has accepted the tariff as not governing on shipments of Kleenex. The wording of the item in question has not been changed during all this period, but it is only now that it is urged that it governs. So far as we are advised, no other shipper of the same products has contended that such item governs.

The carriers point out that an inspection of the dry goods items in this tariff shows that there is not a single paper item in the whole list, paper and paper articles being carried in another part of the tariff; that it is obvious from this that "towels, other than cotton" in the dry goods list in Item 360, cover textile towels; that when these cellulose articles were included in the tariff, it was as a separate and distinct item and not under the dry goods list; further stating they are quite certain that if they attempted to interpret the entry "pins" in this item as applying on husking pins, coupling pins, clevis pins, iron or steel pins such as are used for securing wheels to shafts, the Board would consider such an argument ridiculous. Applicant states the reference to paper articles has no bearing, as these cellulose commodities are not paper articles. This seems to us extremely technical, because, to the layman, the articles appear as paper and cellulose is described in Webster's Dictionary as "an inert substance constituting the chief part of paper."

The most important point, in our opinion, is whether the article in question is actually a towel in any reasonable and proper sense, or within the usual conception of that term. The Board has before it three boxes of these products made by different manufacturers. On one manufactured by the applicant the boxes are stencilled "Kleenex Disposable Tissues;" "The Handkerchief for Health;" "The Sanitary Way to remove all Cosmetics." On one manufactured by the Pond's Extract Company is stencilled "Pond's Tissues;" "For Handkerchiefs;" "For Removing Cold Cream." The third package, maker unknown, is described as "Facel Cleaning Tissues;" "For Removing Cosmetics;" "For Handkerchiefs." There is no reference to towels on any of the packages. The carriers state that since these cellulose products have been manufactured in Canada, they do not find that the shipping orders, bills of lading, or invoices

have ever referred to the article as a towel; that where they have had an opportunity of inspecting the invoices they find that they described the articles as " Kleenex Tissues;" " Facel Cleaning Tissues;" or " Handkerchiefs for Removing Cold Cream." They further state:—

> " It has been our understanding, as well as that of the public at large, that a towel was an article to be used for drying the hands, face or body, after washing or bathing, also for drying dishes, and for purposes where necessary to absorb water. If one will attempt to dry their wet hands with one of these cellulose articles, I am sure they will be convinced immediately that the term " towel " does not properly describe the article.
>
> . . . . . .
>
> "In the opinion of the carriers, the word "towel" as applied by the complainants to the cellulose products shipped is a misnomer and does not properly describe the article shipped."

The applicant states:—

> " When this commodity was first produced, its intention was to eliminate the soiling of hand towels in the removing of cosmetics and cold creams, and it was so advertised."
>
> " It is true that many other uses have been found and suggested for the use of Kleenex, such as cleaning the face after applying liquid cleansers and lotions, to protect the hair when applying cold cream, for manicuring to save towels, removing of excess oil from the hair, cleansing and polishing of silver, as guest towels, for wiping razor blades, cleansing of eye glasses, etc.—all of these uses eliminating and saving the towels manufactured from linens or cottons."

It will be noted applicant states that Kleenex can be used for many purposes to avoid " the soiling of hand towels " and for "eliminating and saving towels manufactured from linens or cottons." In an advertising slip there is described fifty ways to use Kleenex and, being issued by applicant, it is unnecessary to here enumerate them. It is advertised for use as a handkerchief and as a " special comfort during colds, hay fever and other nose and throat infections:" Item 380 in the same tariff makes provision for handkerchiefs at a rate much higher than provided for in item 360 for towels and it could as logically be contended under the applicant's argument that the handkerchief rate is applicable. The article is also advertised for use as lunch napkins, consequently, under the same argument, it is a napkin. Certainly many of the uses specified are not those for which a towel is ordinarily employed, as, for instance, a penwiper, emergency blotter, cleaning and polishing shoes, etc. Any clean rag, piece of cheesecloth, or tissue may be used for the same purposes, but this does not change their character and designation from a cloth or a tissue into a towel.

RULING

Upon consideration of the submissions filed and for the reasons herein set out, the ruling of the Board is that items 360 and 360A in Canadian Freight Association tariff C.R.C. No. 466 are not applicable on shipments of Kleenex.

Ottawa, Ont., July 24, 1933.

ORDER No. 50176

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13

THURSDAY, the 20th day of July, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the toll published to Lawrencetown, Nova Scotia, in item 175D of Supplement No. 63 to Tariff C.R.C. No. 817, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said item 175D of Supplement No. 63 to Tariff C.R.C. No. 817, approved herein, is 10 cents per 100 pounds.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 50177

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13

THURSDAY, the 20th day of July, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the tolls published in item 2-A of Supplement No. 56 to Tariff C.R.C. No. 856, filed by the Dominion Atlantic Railway Company under the provisions of section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said item 2-A of Supplement No. 56 to Tariff C.R.C. No. 856, approved herein, are as follows:—

From	Rates in cents per 100 pounds
Windsor, N.S.	59
Kentville, N.S.	57½
Kingsport, N.S.	61½
Weston, N.S.	66½
Middleton, N.S.	54
Bridgetown, N.S.	52½
Annapolis, N.S.	50
Clementsport, N.S.	49
Bear River, N.S.	45
Digby, N.S.	44
Bloomfield, N.S.	41½
Plympton, N.S.	39
Weymouth, N.S.	35
Church Point, N.S.	34
Little Brook, N.S.	31½
Parker Eakins Siding, N.S.	27½
Sigogne, N.S.	26½
Hectanooga, N.S.	22½
Brazil Lake, N.S.	21½

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 50183

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act; and the Order of the Board No. 50054, dated June 28, 1933, approving the tolls published in item 90-D of Supplement No. 55 to Tariff C.R.C. No. 817 filed by the Dominion Atlantic Railway Company.

File No. 34822.13

SATURDAY, the 22nd day of July, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

Upon its appearing that an erroneous normal toll was shown in clause 2 of the said Order No. 50054,—

It is ordered: That Order No. 50054, dated June 28, 1933, be, and it is hereby, amended by striking out the figure "6" for distances over 60 to 75 miles and substituting therefor the figure "6½".

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 50184

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.12

SATURDAY, the 22nd day of July, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the tolls published to Tweed, Ontario, in item 1370-B of Supplement No. 15 to Tariff C.R.C. No. E-4632, filed by the Canadian Pacific Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls for the purpose of reimbursement under subsection 3 of section 9 of the said Act on traffic carried under the said item 1370-B of Supplement No. 15 to Tariff C.R.C. No. E-4632 are as follows:—

	Rates in cents per 100 pounds
Minimum weight, 60,000 lbs.	40½
Minimum weight, 80,000 lbs.	38½

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 50186

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.2

TUESDAY, the 25th day of July, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

The Board orders: That the tolls published in Supplement No. 6 to tariff C.R.C. No. E-1835, Supplement No. 1 to Tariff C.R.C. No. E-1976, and Tariff C.R.C. No. E-2032, filed by the Canadian National Railways under section 3 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 50189

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act; and the Order of the Board No. 50118, dated July 7, 1933, approving the tolls published in tariff C.R.C. No. 884, filed by the Dominion Atlantic Railway Company.

File No. 34822.13

TUESDAY, the 25th day of July, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

Upon its appearing that errors were made in clause 2 of the said Order No. 50118,—

It is ordered: That the said Order No. 50118, dated July 7, 1933, be, and it is hereby, amended by striking out the figures "41½" for Peterborough, Ontario, under minimum weight 60,000 pounds, and "26½" for Quebec, Quebec, under minimum weight 80,000 pounds, in clause 2 thereof, and substituting therefor the figures "42" and "27" respectively.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 50193

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Martime Freight Rates Act.

File No. 34822.13

THURSDAY, the 27th day of July, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the toll published in Tariff C.R.C. No. 890, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said Tariff C.R.C. No. 890, approved herein, is 44 cents per 100 pounds, $1\frac{1}{2}$ cents per 100 pounds to be deducted on account of water haul.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 50200

In the matter of the application of the Canadian National Railways, hereinafter called the "Applicants", under Section 276 of the Railway Act, for authority to open for the carriage of freight traffic a portion of its Sunny-Brae-Guysboro Branch from Mileage 1 to 10, in the Province of Nova Scotia.

File No. 36544.12

TUESDAY, the 1st day of August, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

Upon the report and recommendation of the Chief Engineer of the Board, and the filing of the necessary affidavit,—

It is ordered:

1. That the Applicants be, and they are hereby, authorized to open for the carriage of freight traffic a portion of their Sunny-Brae-Guysboro Branch from mileage 0 to 10, in the Province of Nova Scotia.
2. That operation over the said portion of railway be limited to a rate of speed not exceeding ten miles an hour.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 50207

In the matter of the application of the Express Traffic Association of Canada, under Sections 322 and 360 of the Railway Act, for approval of proposed Supplement "B" to Express Classification for Canada No. 8, on file with the Board under file No. 4397.111.2.

THURSDAY, the 3rd day of August, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Asst. Chief Commissioner.*

Upon the report and recommendation of the Chief Traffic Officer of the Board—

It is ordered: That the said proposed Supplement "B" to Express Classification for Canada No. 8, on file with the Board under file No. 4397.111.2, be, and it is hereby, approved; the said supplement to be published as Supplement No. 2 to Express Classification for Canada No. 8.

C. P. FULLERTON,
Chief Commissioner.

ACCIDENTS REPORTED TO THE OPERATING DEPARTMENT, BOARD OF RAILWAY COMMISSIONERS, FOR MONTH OF MAY, 1933

Railway accidents	126, with	22 persons killed and	120 injured.
Railway accidents at highway crossings	12, with	8 persons killed and	12 injured.
	138	30	132

	Killed	Injured
Passengers	—	9
Employees	6	86
Others	24	37
	30	132

DETAILS OF ACCIDENTS AT HIGHWAY CROSSINGS

No. of Accidents	
	Quebec
1	Automobile—Auto driver failed to stop for crossing. Licence P.Q. 56868.
1	Auto truck—Truck driver failed to stop for crossing. Licence P.Q. F-31983.
	Ontario
1	Automobile—Auto ran into front end of train. Licence Ont. FA-340.
1	Automobile—Auto ran into side of train. Licence Ont. TO-916.
1	Automobile—Auto driver failed to see or hear approaching train. Licence Ont. Z-1123.
1	Automobile—Licence F-1880, Ontario.
1	Automobile—Auto driver failed to see or hear train, subsequently arrested for reckless driving. Licence Ont. Y-9744.
1	Automobile—Licence Ont. LR-737.
1	Auto truck—Truck driver failed to see or hear train. Licence Ont. 1714-C.
1	Motor cycle—Motor cycle driver failed to have machine under proper control. Licence Ont. 3-407.
	Alberta
1	Automobile—Auto driver failed to look out for rail traffic. Licence Alta. 21366.
1	Auto truck—Truck driver failed to observe approaching train. Licence Alta. 10-162.

All of the twelve highway crossing accidents occurred at unprotected crossings. Nine of the accidents occurred during the daylight hours and three at night.

Ottawa, July 28, 1933.

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DEC 4 1935

The Board of

Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

Vol. XXIII Ottawa, September 1, 1933 No. 12

This publication is issued fortnightly, on the 1st and 15th of each month. Annual subscription, $3.00; single numbers, 20 cents; in quantities, 25 per cent discount. Remittances should be made to the King's Printer, Ottawa, by postal money order, express order or accepted cheque. The use of currency for this purpose is contrary to the advice of the postal authorities and entails a measure of risk. Postage stamps, foreign money or uncertified cheques will not be accepted. No extra charge is made for postage on documents forwarded to points in Canada and in the United States, but cost of postage is added to the selling price when documents are mailed to other countries. Early application should be made for copies in quantities. Subscriptions should be sent, in every case, to the King's Printer, Ottawa.

ORDER No. 50212

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.2

WEDNESDAY, the 9th day of August, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

The Board orders: That the tolls published in the following supplements and tariffs filed by the Canadian National Railways under section 3 of the Maritime Freight Rates Act be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3, namely:—

Supplement 7 to Tariff C.R.C. No. E-1227.
Supplement 8 to Tariff C.R.C. No. E-1242.
Supplement 42 to Tariff C.R.C. No. E-1244.
Supplement 25 to Tariff C.R.C. No. E-1247.
Supplement 8 to Tariff C.R.C. No. E-1671.
Supplement 9 to Tariff C.R.C. No. E-1737.
Supplement 17 to Tariff C.R.C. No. E-1804.
Supplement 4 to Tariff C.R.C. No. E-1906.
Supplement 2 to Tariff C.R.C. No. E-1976.
Tariff C.R.C. No. E-2035.
Tariff C.R.C. No. E-2037.
Supplement 23 to Tariff C.R.C. No. E-1504.

C. P. FULLERTON,
Chief Commissioner.

67468—1

ORDER No. 50211

In the matter of the application of the Canadian Pacific Railway Company, hereinafter called the "Applicant Company," for permission to cancel on less than statutory notice rates to Smithville, Ontario, including pick-up and delivery service, now published in Tariff C.R.C. No. E-4662.

File No. 27612.80

THURSDAY, the 10th day of August, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

Upon its appearing that the applicant company is unable to arrange for pick-up and delivery service at Smithville, Ontario, in connection with rates now published in the said Tariff C.R.C. E-4662,—

It is ordered: That the applicant company be, and it is hereby, permitted to cancel, upon three days' notice, rates, including pick-up and delivery service, at Smithville, Ontario.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 50218

In the matter of the application of the Canadian National Railways, hereinafter called the "Applicants," under Section 276 of the Railway Act, for authority to open for the carriage of passenger traffic their Oka Spur, mileage 0 to 5·74, in the Province of Quebec.

File No. 37499.2

FRIDAY, the 11th day of August, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

Upon the report and recommendation of the Division Engineer of the Board, and the filing of the necessary affidavit,—

It is ordered: That the applicants be, and they are hereby, authorized to open for the carriage of passenger traffic their Oka Spur, mileage 0 to 5·74, in the province of Quebec.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 50229

In the matter of the application of the Express Traffic Association of Canada, on behalf of the express companies subject to the jurisdiction of the Board, for approval of proposed Supplement No. 17 to tariff C.R.C. No. E.T. 694, covering amendments to the Regulations for the Transportation by Express of Acids, Inflammables, etc., on file with the Board under file No. 1717.12:

MONDAY, the 14th day of August, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*
J. A. STONEMAN, *Commissioner.*

Upon reading what is filed in support of the application and the consents of the Boards of Trade of the Cities of Toronto and Montreal and the Canadian Manufacturers' Association; and upon the report and recommendation of the Assistant Chief Traffic Officer of the Board,—

It is ordered: That the said Supplement No. 17 to Tariff C.R.C. No. E.T. 694, covering amendments to the Regulations for the Transportation by Express of Acids, Inflammables, etc., on file with the Board under file No. 1717.12 be, and it is hereby, approved.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 50236

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act:

File No. 34822.12

TUESDAY, the 15th day of August, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the toll published from Dyer's and Bonny River, New Brunswick, to Fairville, New Brunswick, in Supplement No. 17 to Tariff C.R.C. No. E-4322, filed by the Canadian Pacific Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll for the purpose of reimbursement under subsection 3 of section 9 of the said Act on traffic carried under the said Supplement No. 17 to Tariff C.R.C. No. E-4322, approved herein, is 5 cents per 100 pounds.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 50237

In the matter of the application of the Toronto, Hamilton & Buffalo Railway Company, hereinafter called the "Applicant Company," for permission to cancel on less than statutory notice rates to Smithville, Ontario, including pick-up and delivery service, now published in Tariff C.R.C. No. 1532:

File No. 27612.80

TUESDAY, the 15th day of August, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

Upon its appearing that the applicant company is unable to arrange for pick-up and delivery service at Smithville, Ontario, in connection with rates now published in the said Tariff C.R.C. No. 1532,—

It is ordered: That the applicant company be, and it is hereby, permitted to cancel, upon three days' notice, rates, including pick-up and delivery service, at Smithville, Ontario.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 50239

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.12

THURSDAY, the 17th day of August, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the tolls published in items 447 and 555 in Supplement No. 53 to Tariff C.R.C. No. E-4312 filed by the Canadian Pacific Railway Company under section 9 of the Maritime Freight Rates Act be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said items 447 and 555 of Supplement No. 53 to Tariff C.R.C. No. E-4312, are as follows:—

ITEM 447

Miles—	Rates in cents per 100 pounds
Not over 20	3½
Over 20 to 30	4½
Over 30 to 40	5½
Over 40 to 50	6
Over 50 to 60	6½
Over 60 to 70	7½
Over 70 to 80	8½
Over 80 to 90	9
Over 90 to 100	9½
Over 100 to 150	10
Over 150 to 200	10½
Over 200 to 250	11
Over 250 to 300	12
Over 300 to 350	14

ITEM 555

To—

Edmundston, N.B.	19½
Fredericton, N.B.	13
Grand Falls, N.B.	18
Marysville, N.B.	13
Milltown, N.B.	10
Plaster Rock, N.B.	17½
St. Leonard, N.B.	19
St. Stephen, N.B.	10
Woodstock, N.B.	15½

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 50242

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act, and the Order of the Board No. 50177, dated July 20, 1933, approving the tolls published in item 2-A of Supplement No. 56 to Tariff C.R.C. No. 856 filed by the Dominion Atlantic Railway Company.

File No. 34822.13

THURSDAY, the 17th day of August, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

Upon its appearing that the tolls in the said item 2-A of Supplement No. 56 to Tariff C.R.C. No. 856 are shown per barrel,—

It is ordered: That the words, "Rates in cents per 100 pounds," shown in paragraph 2 of the said Order No. 50177, dated July 20, 1933, be struck out and the words, "Rates in cents per barrel," substituted therefor.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 50250

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.2

FRIDAY, the 18th day of August, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

It is ordered: That the tolls published in the following tariffs filed by the Canadian National Railways under section 3 of the Maritime Freight Rates Act be, and they are hereby, approved, subject to the provisions of subsection 3 of the said section 3, namely:—

Supplement 8 to Tariff C.R.C. No. E-1231.
Supplement 10 to Tariff C.R.C. No. E-1737.
Supplement 18 to Tariff C.R.C. No. E-1804.
Supplement 3 to Tariff C.R.C. No. E-1976.
Tariff C.R.C. No. E-2042.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 50251

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13

FRIDAY, the 18th day of August, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the toll published in Tariff C.R.C. No. 892, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said Tariff C.R.C. No. 892, is 27 cents per 100 pounds; 1½ cents per 100 pounds to be deducted account water haul.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 50252

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13

FRIDAY, the 18th day of August, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the toll published in Tariff C.R.C. No. 891 filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act be, and it is hereby approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said Tariff C.R.C. No. 891 approved herein, is 37½ cents per 100 pounds; 1½ cents per 100 pounds to be deducted account of water haul.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 50253

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13

FRIDAY, the 18th day of August, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the tolls published in items 75-C and 149 of Supplement No. 64 to Tariff C.R.C. No. 817 filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said items 75-C and 149 of Supplement No. 64 to Tariff C.R.C. No. 817 approved herein, are as follows:—

For—	Rates in cents per 100 pounds
Item 75-C	11½
Item 149	9

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 50262

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Martime Freight Rates Act.

File No. 34822.13

FRIDAY, the 18th day of August, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the tolls published in Supplement No. 3 to Tariff C.R.C. No. 874 filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried

under the said Supplement No. 3 to Tariff C.R.C. No. 874 approved herein, are as follows:—

	Rates in cents per barrel
Ellerhouse, N.S. Windsor, N.S.	17½
Falmouth, N.S. Hantsport, N.S.	19
Avonport, N.S. Port Williams, N.S.	19½
Kentville, N.S.	22½
Coldbrook, N.S. Berwick, N.S.	24½
Aylesford, N.S. Kingston, N.S.	26½
Wilmot, N.S. Annapolis Royal, N.S.	29
Clementsport, N.S. Digby, N.S.	30½
North Range, N.S. Yarmouth, N.S.	31½
Brooklyn, N.S. Mosherville, N.S.	19½
Clarksville, N.S. Kennetcook, N.S.	22½
Paterson's, N.S. Burton's, N.S.	24½
South Maitland, N.S. Clifton, N.S.	26½
Lower Truro, N.S. Truro, N.S.	24
Mill Village, N.S. Kingsport, N.S.	24½
Billtown, N.S. Grafton, N.S.	24½
Somerset, N.S. Weston, N.S.	26½

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 50263

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Martime Freight Rates Act.

File No. 34822.13

FRIDAY, the 18th day of August, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the tolls published in Supplement No. 5 to Tariff C.R.C. No. 875 filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said Supplement No. 5 to Tariff C.R.C. No. 875 approved herein, are as follows:—

From	Rates in cents per barrel
Ellerhouse, N.S. Newport, N.S.	19
Windsor, N.S. Hantsport, N.S.	19
Avonport, N.S. Port Williams, N.S.	19½
Kentville, N.S.	20
Coldbrook, N.S. Berwick, N.S.	22½
Aylesford, N.S. Kingston, N.S.	23
Wilmot, N.S. Annapolis Royal, N.S.	25
Clementsport, N.S. Digby, N.S.	27½
North Range, N.S. Yarmouth, N.S.	32
Brooklyn, N.S. Mosherville, N.S.	19½
Clarksville, N.S. Kennetcook, N.S.	20
South Maitland, N.S. Lower Truro, N.S.	23
Mill Village, N.S. Kingsport, N.S.	22½
Billtown, N.S. Grafton, N.S.	22½
Somerset, N.S. Weston, N.S.	23

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 50264

In the matter of the application of the Buffalo and Fort Erie Public Bridge Company, hereinafter called the "Applicant Company," under Section 348 of the Railway Act, for approval of the conditions limiting liability to be printed on free annual and trip transportation, and signed by the holders thereof, the said conditions being on file with the Board under file No. 496.43.

FRIDAY, the 18th day of August, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*
J. A. STONEMAN, *Commissioner.*

Upon reading the application and what is alleged in support thereof,—

It is ordered: That the proposed conditions to be printed on passes issued by the applicant company limiting its liability, which are on file with the Board under the said file No. 496.43, be, and the same are hereby, approved.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 50254

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13

MONDAY, the 21st day of August, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the tolls published in item 80 of Supplement No. 24 to Tariff C.R.C. No. 811 filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said item 80 of Supplement No. 24 to Tariff C.R.C. No. 811 approved herein, are as follows:—

To—	Rates in cents per 100 pounds
Halifax, N.S.	7
Wolfville, N.S.	5½
Kentville, N.S.	6½
Yarmouth, N.S.	10½
Truro, N.S. (Local)	7½
Truro, N.S. (Furtherance)	7

C. P. FULLERTON,
Chief Commissioner.

ACCIDENTS REPORTED TO THE OPERATING DEPARTMENT, BOARD OF RAILWAY COMMISSIONERS, FOR MONTH OF JUNE, 1933

Railway accidents	137, with	13 persons killed and	136 injured.
Railway accidents at highway crossings	15, with	3 persons killed and	21 injured.
	152	16	157

	Killed	Injured
Passengers	—	19
Employees	—	103
Others	16	35
	16	157

DETAILS OF ACCIDENTS AT HIGHWAY CROSSINGS

No. of Accidents	
	New Brunswick
1	Automobile—Auto driver attempted to cross track ahead of train. Licence N.B. F-1786.
	Quebec
1	Automobile—Driver of auto failed to stop for crossing. Licence Que. 74987.
1	Auto Truck—Truck driver attempted to beat train. Licence Que. F-1704.
1	Pedestrian—Boy darted in front of train to pick up key ring.
2	Pedestrian.
	Ontario
1	Automobile—Auto driver drove past crossing watchman onto track in front of train. Licence Ont. L-2798.
1	Automobile—Stalled on crossing. Licence Ont. AD-342.
1	Automobile—Auto driver failed to see or hear train. Licence Ont. U-3557.
1	Automobile—Ran into side of train. Licence Ont. Y-3147.
1	Automobile—Licence Ont. LV-265.
2	Pedestrian.
	Alberta
1	Automobile—Ran into side of train. Licence Alta. 46658.
1	Automobile—Auto driver failed to observe approaching train. Licence Alta. 14077.

Of the fifteen accidents at highway crossings, eleven occurred at unprotected crossings and 4 at protected crossings. Eleven of the accidents occurred during the daylight hours and four at night.

Ottawa, August 19, 1933.

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DEC 1 1935

The Board of

Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

Vol. XXIII **Ottawa, September 15, 1933** **No. 13**

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Application of the Canadian Car Demurrage Bureau for Ruling of the Board re Rule 8 of the Canadian Car Demurrage Rules.

File No. 1700.388.

By the Board:

This is an application from the Canadian Car Demurrage Bureau for a ruling of the Board concerning the interpretation of Rule 8 of the Canadian Car Demurrage Rules approved by the Board's General Order No. 201, dated August 1, 1917. The application originates as a result of exception being taken by Messrs. James Richardson and Sons, of Toronto, to the interpretation placed upon the rule by the Demurrage Bureau. The nature of the dispute between the parties, the interpretation placed upon the rule by the Demurrage Bureau, and the reasons in support thereof are fully set out in the application dated July 29, 1933, reading as follows:—

"Exception has been taken by Messrs. Jas. Richardson and Sons of Toronto to our interpretation of Rule 8 of the demurrage tariff, and we would be pleased to obtain the Board's ruling.

"Canadian Pacific Tariff E-3050, Item 90, reads as follows:—

'1. Grain, grain products, hay or potatoes, carloads, may be stopped off at points named in paragraph 2, for purpose of inspection, change of destination or for orders, subject to regulations authorized herein.

'2. Grain, grain products and hay may be stopped off at Outremont, Que., and West Toronto, Ont.'

The privilege of stopping for inspection on Eastern Lines is only permitted at the two points named.

"It will be noted that tariff makes no mention of Government inspection. The inspection referred to is entirely for commercial purposes and may be made by the consignee, by the party to whom the owner expects to make a sale, by the Government inspector at the request of the owner, or by any other authorized party.

"The cars involved in this dispute were consigned to Jas. Richardson and Sons, Toronto, allow inspection. Consignees were notified of arrival and arranged with the grain inspector to make an inspection and furnish certificate of grading, which was done, but the certificate was

not received by the consignee in time to permit of disposal orders being given to the railway within the free time allowed under the demurrage tariff, and the position taken by the consignee is that the delay was chargeable to the grain inspector and such being the case demurrage cannot accrue. Their contention is based on Rule 8 of the demurrage tariff, which reads as follows:—

> 'Demurrage shall not be collected from the consignee for any delays for which Government or railway officials may be responsible.'

"Our interpretation of the rule quoted is that same has reference to delays chargeable to Canadian Government officials only where the acts of such officials are required by a regulation of the railway or the Government. For instance, the carriers undertake to bring goods into the country in bond, and after Government regulations have been complied with by the importer then any delay in issuing the permit to the railway to allow delivery would be considered delay chargeable to an official of the Government; or, if on presentation of papers at customs by the importer the officer has reason to doubt the correctness of the entry and decides to appraise, gauge, weigh, etc., the shipment, any time lost in performing such services would be considered chargeable to the Government.

"The Department of Agriculture has regulations in effect prohibiting the importation of certain commodities until such time as the shipment has been inspected and, if necessary, analysed, and any time lost in making such inspection, or analysis, is considered Government delay.

"The inspection of the grain referred to was not required under any railway or Government regulation. The grade certificate required was for the exclusive use and benefit of the consignee, and we cannot read into the demurrage tariff that free time in excess of the forty-eight hours permitted can be allowed on account of a consignee finding it advisable to obtain a grade certificate for his exclusive use and benefit. Under the contention that Demurrage Rule No. 8 governs in cases of this kind, there would be the situation that if there was a delay when the inspection is made by a Government official there would be no demurrage, but, assuming that someone fully qualified to make the inspection, but not a Government official, were engaged, then, obviously, the rule makes no provision for allowance for delay by such party and, apparently, this would be an interpretation without logical reasoning.

"The grain inspector, while he may be a Government official, is at the time of making inspection under the pay of the consignee and must be considered an employee of such consignee.

"If delays chargeable to the grain inspector (the act performed being for the exclusive use and benefit of the consignee) should be allowed it would have a far-reaching effect, and we will cite a few instances where the rule would apply, as the delays are chargeable to Government officials, but as the acts are not required by any regulation of the Railway or the Government it has not been the practice to make allowance.

"A shipment billed to 'order' arrives at billed destination but the party for whom it is intended is unable to take delivery account of the bill of lading being delayed in the mails, this being indicated by the post office date stamped on the envelope; or, invoices required for customs purposes are similarly delayed.

"The Government at the present time has inspectors at numerous points who are prepared to furnish shippers with grade certificates for any commodities, such as fruit, vegetables, etc., and if application was

made to any one of these officers for an inspection and there was delay in making such inspection, or in furnishing the certificate of such inspection by the inspector, it would be delay chargeable to a Government official, even though such official was acting for and being paid by the shipper in exactly the same manner as the grain inspector.

"Such a rule would also apply in connection with obtaining the required papers, such as consular invoice, etc., where there might be a delay in same being promptly issued by the officer, in this case a Government Official of the United States or some other foreign country.

"A copy of this letter is being forwarded to Messrs. Jas. Richardson and Sons, Toronto."

Copy of the application is shown as having been forwarded to Messrs. James Richardson and Sons and, on August 21, no submissions having been filed by them, they were written to by the Board asking if they desired to make submissions in the matter before it was finally considered and, if so, that same should be promptly filed. No reply has been received.

RULING

The ruling of the Board is that the rule in question only covers delays by Government officials where, under Government or railway regulations, certain acts are required to be performed by said officials before cars can be released; that it does not cover delays not necessitated by Government or railway regulations, or, as in this case, where the inspection is entirely for commercial purposes and the party making the inspection does so and acts as an agent or employee of the consignee or any other authorized party for the purpose of such inspection.

OTTAWA, ONT.,
September 6, 1933.

ORDER No. 50268

In the matter of the application of the Canadian National Railways, hereinafter called the "Applicants," under Section 276 of the Railway Act, for authority to open for the carriage of traffic the track connection between the Bala and the Sutton Subdivisions at Zephyr, Ontario.

File No. 34992

WEDNESDAY, the 23rd day of August, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

Upon the report and recommendation of the Assistant Chief Engineer of the Board, and the filing of the necessary affidavit,—

It is ordered: That the applicants be, and they are hereby, authorized to open for the carriage of traffic their trackage connecting their Bala Subdivision at mileage 45·25 with their Sutton Subdivision at mileage 16·63, a distance of 3,611 feet; also the south leg of the wye, a distance of 935 feet.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 50277

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.12

SATURDAY, the 26th day of August, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the toll published from Dyer's, New Brunswick, and Bonny River, New Brunswick, to Fairville, New Brunswick, in Supplement No. 22 to Tariff C.R.C. No. E-4322 filed by the Canadian Pacific Railway Company under section 9 of the Maritime Freight Rates Act be, and it is hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said Supplement No. 22 to Tariff C.R.C. No. E-4322, approved herein, is 5½ cents per 100 pounds.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 50281

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.12

TUESDAY, the 29th day of August, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the tolls published in items 95-C and 353 of Supplement No. 54 to Tariff C.R.C. No. E-4312 filed by the Canadian Pacific Railway Company under section 9 of the Maritime Freight Rates Act be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said items 95-C and 353 of Supplement No. 54 to Tariff C.R.C. No. E-4312, approved herein, are as follows:—

For Item 95-C
The 3rd and 5th class rates in effect prior to July 1, 1927.

For Item 353
The rates in effect from Yarmouth, N.S., prior to July 1, 1927.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 50282

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.12

TUESDAY, the 29th day of August, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the tolls published in item 15, and to Beauharnois, Quebec, in item 45-B of Supplement No. 9 to Tariff C.R.C. No. E-4314 filed by the Canadian Pacific Railway Company under section 9 of the Maritime Freight Rates Act be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said items 15 and 45-B of Supplement No. 9 to Tariff C.R.C. No. E-4314, approved herein, are as follows:—

	Rates in cents per 100 pounds
For Item 15	
To	
Berwick, N.S.	59
Kentville, N.S.	62
1½ cents per 100 pounds to be deducted account of water haul.	
For Item 45-B	
To	
Beauharnois, Que.	42

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 50287

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act; and the Order of the Board No. 50252, dated August 18, 1933, approving the toll published in Tariff C.R.C. No. 891 filed by the Dominion Atlantic Railway Company.

File No. 34822.13

WEDNESDAY, the 30th day of August, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the toll published in Tariff C.R.C. No. 891 filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act be, and it is hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act; the Dominion Atlantic Railway Company's proportion to be reported at 18·4 cents per 100 pounds.

2. And the Board hereby certifies that the Dominion Atlantic Railway Company's proportion of the normal rate for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said Tariff C.R.C. No. 891, approved herein, is 23 cents per 100 pounds.

3. And the Board further orders that the said Order No. 50252, dated August 18, 1933, be, and it is hereby, rescinded.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 50288

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13

WEDNESDAY, the 30th day of August, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the tolls published in item 297 of Supplement No. 59 to Tariff C.R.C. No. 856 filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said item 297 of Supplement No. 59 to Tariff C.R.C. No. 856, approved herein, are as follows:—

To	Rates in cents per 100 pounds
Halifax, N.S.	30½
Truro, N.S.	32

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 50290

In the matter of the Order of the Board No. 49943, dated June 10, 1933, requiring amendment to the Ottawa Electric Railway Company's Special Passenger Tariff C.R.C. No. 17, effective August 13, 1933, as set out in paragraph 2 of the said Order.

File No. 6949.2

THURSDAY, the 31st day of August, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*
Hon. T. C. NORRIS, *Commissioner.*
G. A. STONE, *Commissioner.*

Upon its appearing that the Ottawa Electric Railway Company and the Corporation of the City of Ottawa have had subsequent negotiations and agreed upon a tariff of fares not exceeding but in some respects lower than those authorized in the said order, which are contained in the company's Special Passenger Tariff C.R.C. No. 20, filed with the Board, effective August 13, 1933; and upon application by the said parties for an order approving of the said tariff,—

It is ordered: That paragraph 2 of the said Order No. 49943, dated June 10, 1933, be, and it is hereby, rescinded, and the Ottawa Electric Railway Company's Special Passenger Tariff C.R.C. No. 20 is hereby approved; section 1 thereof to be effective for a period of five (5) years from and after the 13th day of August, 1933.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 50294

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.2

SATURDAY, the 2nd day of September, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

The Board orders: That the tolls published in the following tariffs filed by the Canadian National Railways under section 3 of the Maritime Freight Rates Act be, and they are hereby, approved, subject to the provisions of subsection 3 of the said section 3, namely:—

Supplement No. 72 to Tariff C.R.C. No. E-1235.
Supplement No. 60 to Tariff C.R.C. No. E-1240.
Supplement No. 19 to Tariff C.R.C. No. E-1804.
Supplement No. 9 to Tariff C.R.C. No. E-1671.
Supplement No. 2 to Tariff C.R.C. No. E-1974.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 50297

In the matter of the application of the Detroit International Bridge Company, hereinafter called the "Applicant Company," under Section 348 of the Railway Act, for approval of the conditions limiting liability to be printed on free annual and trip transportation, and signed by the holders thereof, the said conditions being on file with the Board under file No. 496.43.

TUESDAY, the 5th day of September, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*
J. A. STONEMAN, *Commissioner.*

Upon reading the application and what is alleged in support thereof, and the report and recommendation of the Assistant Chief Traffic Officer of the Board,—

It is ordered: That the proposed conditions to be printed on passes issued by the applicant company limiting its liability, which are on file with the Board under the said file No. 496.43, be, and the same are hereby, approved.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 50302

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.14.

WEDNESDAY, the 6th day of September, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Asst. Chief Commissioner.*

The Board Orders:

1. That the tolls published in Tariff C.R.C. No. 705, filed by the Temiscouata Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act; the proportions of the Temiscouata and the Canadian Pacific Railway Companies to be reported as follows:—

To	Rate in Cents per One Hundred Pounds: Canadian Pacific Railway	Temiscouata Railway
Chipman, N.B. Fredericton, N.B. Hartland, N.B.	10½	6
Norton, N.B.	13½	6
St. Andrews, N.B. St. Georges, N.B.	14	6
Saint John, N.B. St. Stephen, N.B.	12½	6
Woodstock, N.B.	11	6

2. And the Board hereby certifies that the normal tolls and proportions thereof for the purpose of reimbursements under subsection 3 of section 9 of the said Act, on traffic carried under the said Tariff C.R.C. No. 705, approved herein, are as follows:—

To	Rate in cents per 100 lbs.	Proportions: Canadian Pacific Railway	Temiscouata Railway
Chipman, N.B. Fredericton, N.B. Hartland, N.B.	20½	13	7½
Norton, N.B.	24½	17	7½
St. Andrews, N.B. St. Georges, N.B.	25	17½	7½
Saint John, N.B. St. Stephen, N.B.	23	15½	7½
Woodstock, N.B.	21½	14	7½

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 50303

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13

WEDNESDAY, the 6th day of September, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the toll published in Tariff C.R.C. No. 893, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said Tariff C.R.C. No. 893, approved herein, is 34 cents per 100 pounds; 1½ cents to be deducted account of water haul.

C. P. FULLERTON,
Chief Commissioner.

GENERAL ORDER No. 516

In the matter of the General Order of the Board No. 131, dated July 6, 1914, requiring that locomotive engines of railway companies subject to the jurisdiction of the Board be not allowed to leave terminals, or to be used at terminals, in traffic service, on which certain defects set out in the Order exist.

File No. 21351

THURSDAY, the 17th day of August, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*
G. A. STONE, *Commissioner.*

Upon reading the submissions filed on behalf of the Railway Association of Canada, the Michigan Central Railroad Company, and the Canadian Pacific Railway Company; and upon the report and recommendation of the Chief Operating Officer of the Board,—

It is ordered: That the said General Order No. 131, dated July 6, 1914, be amended by striking out paragraph 3 thereof and substituting therefor the following, namely:—

"3. (1) *Wheels.*—Wheels shall be securely pressed on axles. Prick punching or shimming the wheel fit will not be permitted. The diameter of wheels on the same axle shall not vary more than three thirty-seconds inch.

"(2) Wheels used on standard gauge track will be out of gauge if the inside gauge of flanges, measured on base line, is less than 53 inches or more than 53⅜ inches.

"(3) The distance back to back of flanges of wheels mounted on the same axle shall not vary more than one-fourth inch.

"3A. (1) *Cast Iron or Cast Steel Wheels.*—Cast iron or cast steel wheels with any of the following defects shall not be continued in service:—

"(2) Slid flat.—When the flat spot is $2\frac{1}{2}$ inches or over in length, or if there are two or more adjoining spots each 2 inches or over in length.

"(3) Broken or chipped flange.—If the chip exceeds $1\frac{1}{2}$ inches in length and one-half inch in width.

"(4) Broken rim.—If the tread, measured from the flange at a point five-eighths inch above the tread, is less than $3\frac{3}{4}$ inches in width.

"(5) Shelled out.—Wheels with defective treads on account of cracks or shelled out spots $2\frac{1}{2}$ inches or over, or so numerous as to endanger the safety of the wheel.

"(6) Brake burn.—Wheels having defective tread on account of cracks or shelling out due to heating.

"(7) Seams one-half inch long or over, at a distance of one-half inch or less from the throat of the flange, or seams 3 inches or more in length, if such seams are within the limits of $3\frac{3}{4}$ inches from the flange, measured at a point five-eighths inch from the tread.

"(8) Worn flanges.—Wheels on axles with journals 5 inches by 9 inches or over with flanges having flat vertical surfaces extending seven-eighths inch or more from the tread, or flanges one inch thick or less gauged at a point three-eighths inch above tread. Wheels on axles with journals less than 5 inches by 9 inches with flanges having flat vertical surfaces extending one inch or more from the tread, or flanges fifteen-sixteenths inch thick or less, gauged at a point three-eighths inch above the tread.

"(9) Tread worn hollow.—If the tread is worn sufficiently hollow to render the flange or rim liable to breakage.

"(10) Burst.—If the wheel is cracked from the wheel fit outward.

"(11) Cracked tread, cracked plate, or one or more cracked brackets.

"(12) Wheels out of gauge.

"(13) Wheels loose on axle.

"NOTE.—The determination of flat spots, worn flanges, and broken rims shall be made by a gauge as shown in figure 8, and its application to defective wheels as shown in figures 9, 10, 11, 12, and 13.

"3B. (1) *Forged Steel or Steel-tired Wheels.*—Forged steel or steel-tired wheels with any of the following defects shall not be continued in service:—

"(2) Loose wheels; loose, broken, or defective retaining rings or tires; broken or cracked hubs, plates, spokes, or bolts.

"(3) Slid flat spot $2\frac{1}{2}$ inches or longer; or, if there are two or more adjoining spots, each 2 inches or longer.

"(4) Defective tread on account of cracks or shelled out spots $2\frac{1}{2}$ inches or longer, or so numerous as to endanger the safety of the wheel.

"(5) Broken flange.

"(6) Flange worn to fifteen-sixteenths inch or less in thickness, gauged at a point three-eighths inch above the tread, or having flat vertical surface, one inch or more from the tread; tread worn five-sixteenths inch; flange more than $1\frac{1}{2}$ inches from tread to top of flange, or thickness of tires or rims less than shown in figures 4, 5, 6, and 7.

"(7) Wheels out of gauge.

"3C. *Driving and Trailing Wheels.*—Driving and trailing wheel centres with divided rims shall be properly fitted with iron or steel filling blocks before the tires are applied, and such filling blocks shall be properly

maintained. When shims are inserted between the tire and the wheel centre, not more than two thicknesses of shims may be used, one of which must extend entirely around the wheel.

"3D. Driving wheel counterbalance shall be maintained in a safe and suitable condition for service.

"3E. (1) Driving and trailing wheels with any of the following defects shall not be continued in service:—

"(2) Driving or trailing wheel centres with one or more spokes in wheel broken.

"(3) Loose wheels; loose, broken, or defective tires or tire fastenings; broken or cracked hubs, or wheels out of gauge.

"3F. (1) *Driving and Trailing Wheel Tires.*—The minimum height of flange for driving or trailing wheel tires, measured from tread, shall be one inch for locomotives used in road service, except that on locomotives where construction will not permit the full height of flange on all drivers, the minimum height of flange on one pair of driving wheels may be five-eighths inch.

"(2) The minimum height of flange for driving wheel tires, measured from tread, shall be seven-eighths inch for locomotives used in switching service.

"(3) The maximum taper for tread of tires from throat of flange to outside of tire, for driving and trailing wheels for locomotives used in road service, shall be one-fourth inch, and for locomotives used in switching service five-sixteenths inch.

"(4) The minimum width of tires for driving and trailing wheels of standard-gauge locomotives shall be 5½ inches for flanged tires and 6 inches for plain tires.

"(5) The minimum width of tires for driving and trailing wheels of narrow-gauge locomotives shall be 5 inches for flanged tires and 5½ inches for plain tires.

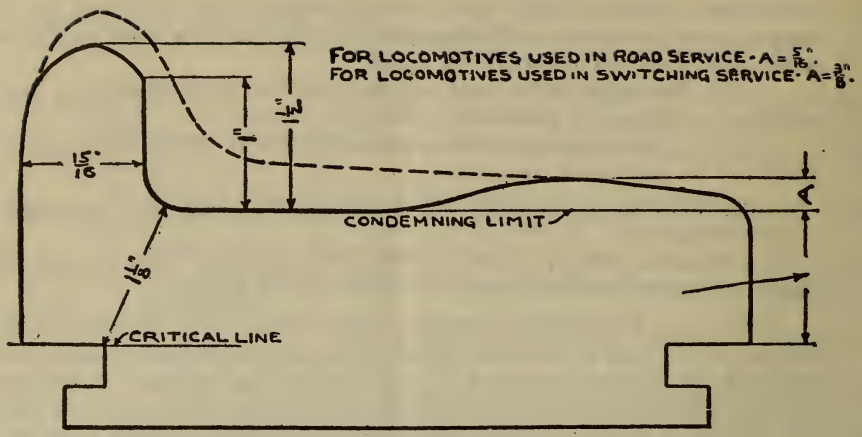
"(6) When all tires are turned, or new tires applied to driving and trailing wheels, the diameter of the wheels on the same axle, or in the same driving wheel base, shall not vary more than three thirty-seconds inch. When a single tire is applied the diameter must not vary more than three thirty-seconds inch from that of the opposite wheel on the same axle. When a single pair of tires is applied the diameter must be within three thirty-seconds inch of the average diameter of the wheels in the driving wheel base to which they are applied.

"(7) Driving and trailing wheel tires with any of the following defects shall not be continued in service:—

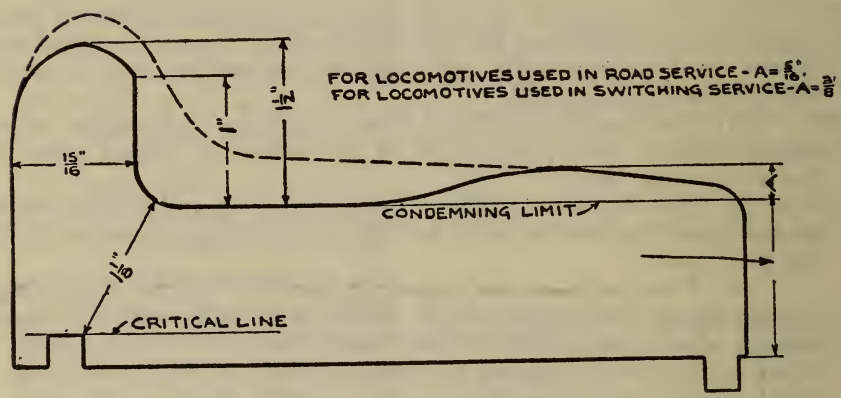
"(8) Slid flat spot 2½ inches or more in length; flange fifteen-sixteenths inch or less in thickness, gauged at a point three-eighths inch above the tread; or having flat vertical surface one inch or more from tread, tread worn hollow five-sixteenths inch on locomotives used in road service, or three-eighths inch on locomotives used in switching service; flange more than 1½ inches from tread to top of flange. (See figures 1, 2, and 3.)

"NOTE.—The determination of flat spots and worn flanges shall be made by a gauge as shown in figure 8, and its application to defective tires as shown in figures 9, 10, and 11."

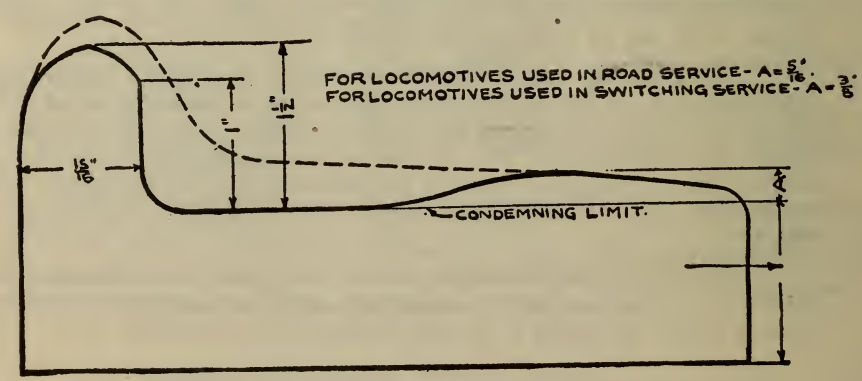
C. P. FULLERTON,
Chief Commissioner,



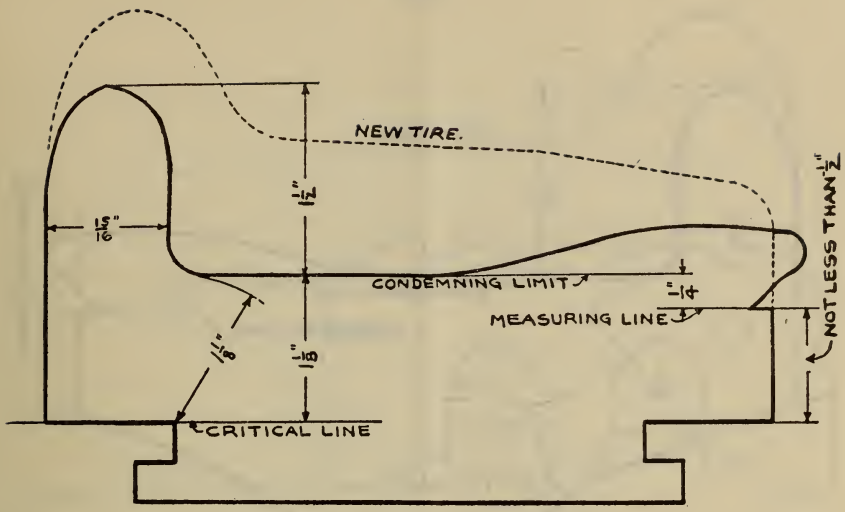
No. 1.—STEEL TIRE
Retaining ring fastening. Driving and trailing wheels.



No. 2.—STEEL TIRE
Shrinkage fastening with shoulder and retaining segments. Driving and trailing wheels.



No. 3.—STEEL TIRE
Shrinkage fastening. Driving and trailing wheels.



No. 4.—STEEL TIRE
Retaining ring fastening. Engine and tender truck wheels.

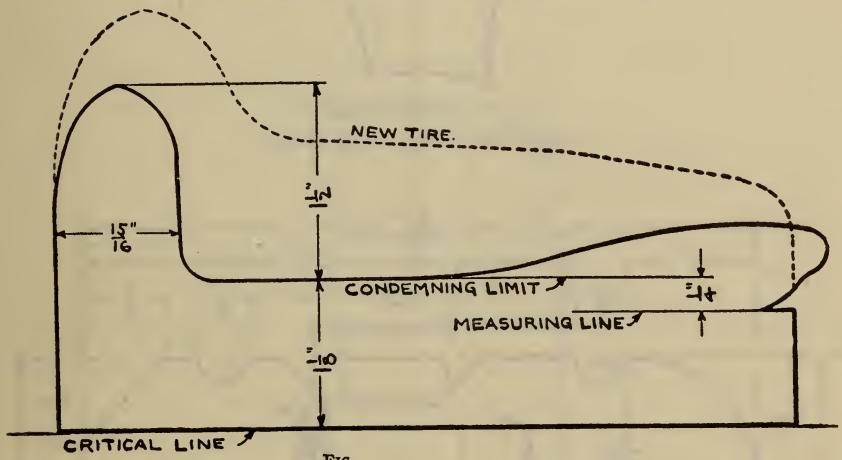
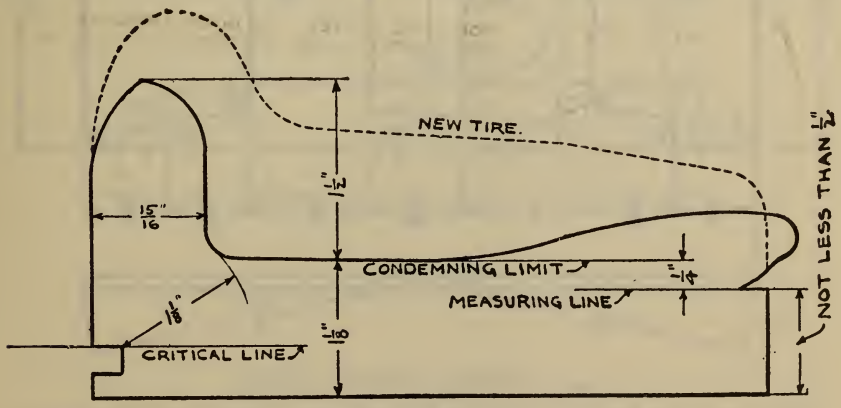
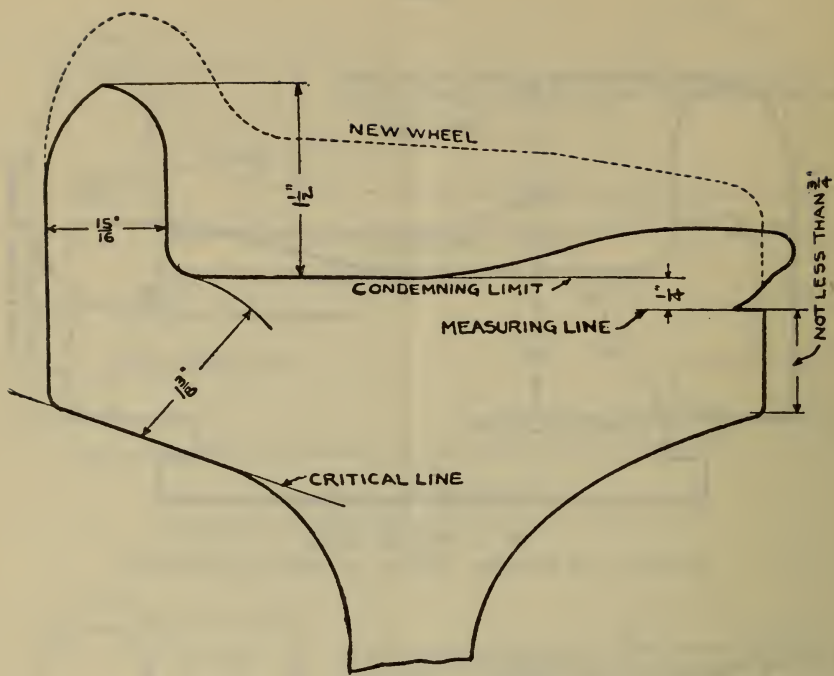


FIG
No. 5.—STEEL TIRE
Shrinkage fastening only. Engine and tender truck wheels.



No. 6.—STEEL TIRE
Retaining ring fastening. Engine and tender truck wheels.



No. 7.—STEEL WHEEL
Engine and tender truck wheels.

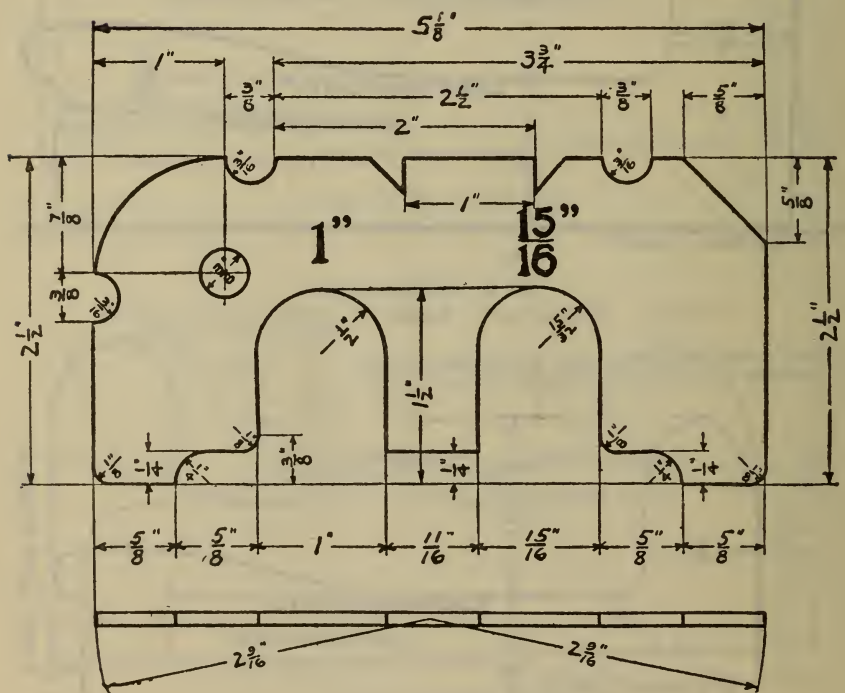


Fig. 8.—WHEEL DEFECT GAUGE
This gauge to be used in determining flat spots, worn flanges, and broken rims.

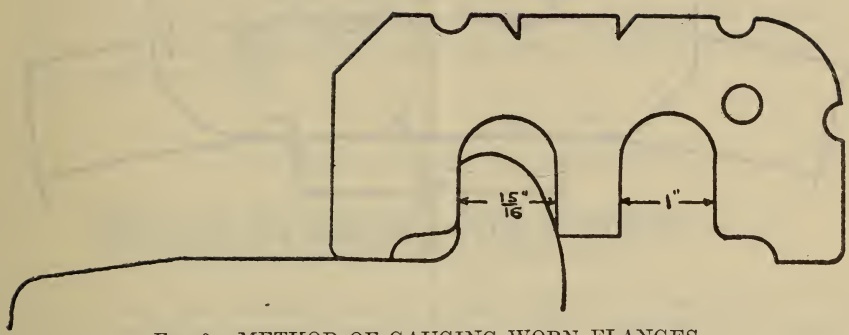


Fig. 9.—METHOD OF GAUGING WORN FLANGES

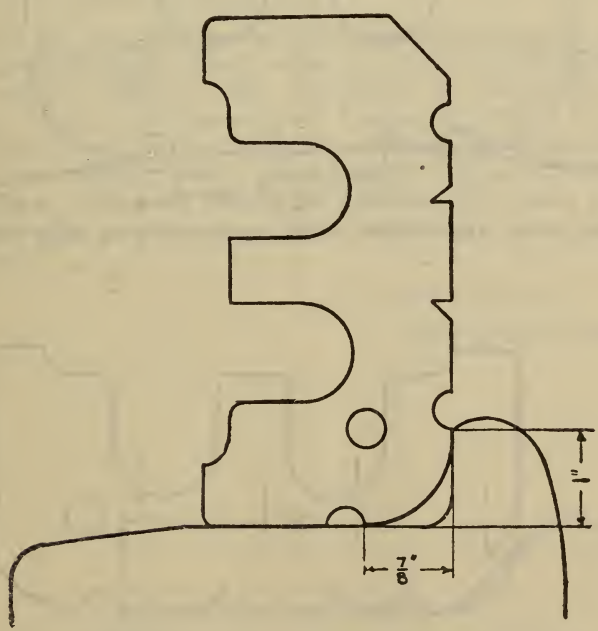


Fig. 10.—METHOD OF GAUGING WORN FLANGES

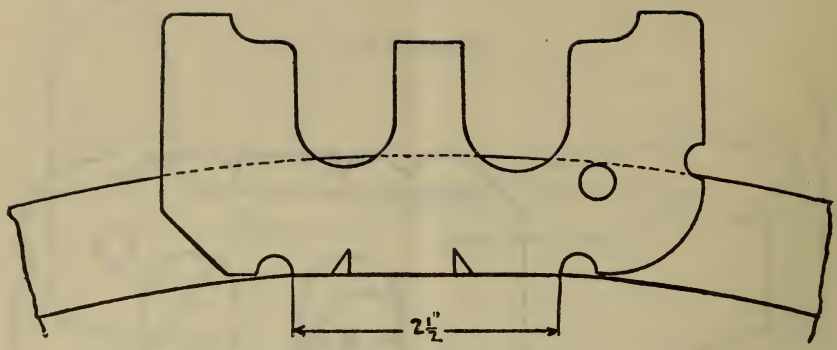


Fig. 11.—METHOD OF GAUGING SHELLED AND FLAT SPOTS

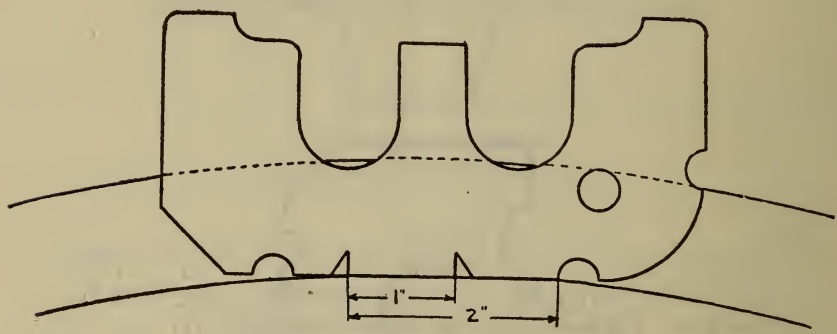


Fig. 12.—METHOD OF MEASURING FLAT SPOTS OF ONE AND TWO INCHES

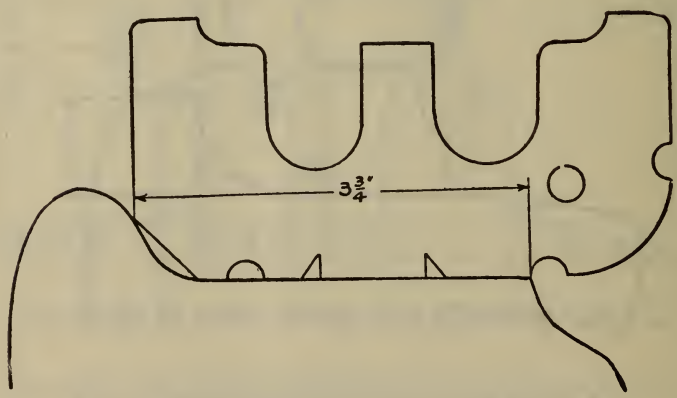


Fig. 13.—METHOD OF GAUGING BROKEN RIMS

GENERAL ORDER No. 517

In the matter of the General Order of the Board No. 333, dated March 26, 1921, prescribing the form, size, and style of the tariffs of telephone tolls to be charged by telephone companies; and directing that the company deposit and keep on file in each city, town, and village, in a convenient place, open for the inspection of the public during business hours, a copy of its Exchange Tariff in use thereat, and print a notice prominently and in bold type in each of its Official Telephone Directories directing the public attention to the place in its office or offices in each city, town, and village where such tariffs are on file.

File No. 3926.1

TUESDAY, the 5th day of September, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

Upon reading the application of the Bell Telephone Company of Canada for an order amending the said General Order No. 333; and upon the report and recommendation of the Assistant Chief Traffic Officer of the Board,—

It is ordered: That General Order No. 333, dated March 26, 1921, be, and it is hereby, amended by striking out paragraph (1) on page 3 thereof and substituting therefor the following, namely:—

> "That the company deposit and keep on file in every city, town, and village in which it maintains an office (or where an office is not maintained, at the nearest company office convenient to the public) a copy of its Exchange Tariff in use thereat, such Exchange Tariff to be kept in a convenient place, open for the inspection of the public during business hours, and that the company print a notice prominently and in bold type in each of its Official Telephone Directories directing the public attention to the place in its office or offices in each city, town, and village where such tariffs are on file."

C. P. FULLERTON,
Chief Commissioner.

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DEC 4 1933

The Board of

Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

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Complaint of Confederated Freight Association, Toronto, that the Canadian National Railways refuse to apply, from Beauharnois to Toronto, the Class Rates in effect via the New York Central Lines and Canadian Pacific Railway.

File No. 26963.98.

JUDGMENT

By the Board:

The complainants in a letter dated July 22, 1933, make the following statement:—

> "It is our contention that the competitive rates via the Canadian Pacific Railway, and the New York Central Railroad, whereby Beauharnois is intermediate to Valleyfield. . . . are also applicable over a movement on the Canadian National Railways, in accordance with the competitive requirements of the systems' tariffs, approved by the Board."

It is also stated that the Canadian National Railways have admitted this as being proper, and that refunds have been made on claims submitted on this basis.

In effect, the claim is that, on traffic moving over the Canadian National Railways, the lawfully filed tariffs of that company should not apply, but, in lieu thereof, the lower rates of a competing company.

Via the Canadian National Railways the movement is a single-line one, the distance between Toronto and Valleyfield being 302 miles, and Beauharnois 328 miles, and the following class rates are published by that company:—

	1	2	3	4	5	6	7	8	10
Valleyfield..	83	72	63	52½	41½	37½	32	34½	29
Beauharnois..	90	79	68	55½	45½	41½	34½	36½	30½

The Canadian Pacific Railway, jointly with the New York Central Railroad, publish the same rates, the joint distances being, Valleyfield 363 miles, and Beauharnois 350 miles. The movement between Valleyfield and Toronto, via this route, is through Beauharnois, and, as rates were not indicated in the tariff as being competitive, the Canadian Pacific Railway, under subsection 3, section 329 of the Railway Act, could not charge from Beauharnois higher rates than in effect from Valleyfield. The Canadian Pacific Railway Company's Tariff C.R.C. No. E-3221 has now been amended to indicate the rates as being competitive, and not applicable between intermediate points, effective January 4, 1933.

In the past, the Board has, only upon the request of the railway, permitted settlement of freight charges on the basis of a lower rate in effect via a competing line, but always with the proviso that all shippers similarly situated shall receive like treatment.

It is stated the Canadian National Railways have settled claims on the basis of the Canadian Pacific Railway Company's rates from Beauharnois, but no application was made to the Board for permission to do so, and their action was without authority and probably illegal.

Subsection 4, section 331, and section 343 of the Railway Act, read as follows:—

> "When the foregoing provisions have been complied with, any such special freight tariff, unless suspended or postponed by the Board, shall take effect on the date stated therein as the date on which it is intended to take effect, and the company shall thereafter, until such tariff is disallowed or suspended by the Board or superseded by a new tariff, charge the toll or tolls as specified therein, and such special freight tariff shall supersede any preceding tariff or tariffs, or any portion or portions thereof, in so far as it reduces or advances the tolls therein."
>
> "If the company files with the Board any tariff and such tariff comes into force and is not disallowed by the Board under this Act, or if the company participates in any such tariff, the tolls under such tariff while so in force shall, in any prosecution under this Act, as against such company, its officers, agents or employees, be conclusively deemed to be the legal tolls chargeable by such company."

These sections make it clear that the only rates the company may charge are those published in their lawfully filed tariffs.

It has been held by the Board that it is within the discretion of the railway company whether or not it shall meet competition, and regardless of alleged unauthorized acts of the Canadian National Railways, and in view of the sections of the Railway Act quoted above, the Board does not require settlement on the basis of rates contrary to the lawfully filed tariffs of the company, and rules that the lawful class rates, in cents per 100 pounds, for movements over the Canadian National Railways, between Beauharnois and Toronto, are as follows:—

1	2	3	4	5	6	7	8	10
90	79	68	55½	45½	41½	34½	36½	30½

Ottawa, September 14, 1933.

Application of the Michigan Central Railroad Company for an Order authorizing it to take out the crossing gates installed under the Board's Order No. 9755, dated February 26, 1910, at Main street, west of Comber Station, Ont., and to permit the company to substitute therefor lightning flash or wigwag signals, whichever the Board sees fit to order.

File No. 9437.133

JUDGMENT

McLean, Assistant Chief Commissioner:

At the hearing at Chatham it appeared to the Board that an agreement could be worked out between the parties. Subsequent to the hearing the Michigan Central Railroad filed consent minutes reading as follows:—

> "1. That leave be, and it is hereby, granted the applicant company to install, in lieu of the gates required to be maintained by the said Order No. 9755, automatic bells and wigwags at Main street, west of Comber Station, Ontario, on the line of the Canada Southern Railway, in accordance with 'The Standard Specifications for Highway Crossing Signals,' approved under General Order No. 468; a detail plan showing the layout thereof to be submitted for the approval of an Engineer of the Board.
>
> "2. That the cost of installing and maintaining the said bells and wigwags, the removal of the gates, and the warning sign which the township agrees to erect on the highway at the point of crossing be borne and paid by the applicant company.
>
> "3. That orders numbered 9755 and 10022, dated respectively February 26, 1910, and March 25, 1910, made herein, be rescinded."

At a later date the solicitors for the municipality stated that one point which required further explanation was whether or not the Standard Specifications for Highway Crossing Signals, approved under General Order No. 468, are applicable to the present case, or whether the proposed plan differed from the said Standard Specifications.

Further discussion has taken place between the municipality and its solicitors. The Board is now in receipt of a communication which reads as follows:—

> "In connection with the tentative Order herein the difficulty of ourselves and of our clients is to know whether the order which is rather general in its terms sufficiently covers the matter. We have had correspondence with the clerk of the municipality of Tilbury West and he has taken the matter up with the council which naturally accounts for part of the delay. The council have instructed the clerk to state that they approve of a system of wigwag protection as shown in the plans submitted a copy of which you no doubt have on file. The understanding is that a special system would be installed, to provide for unnecessary wigwagging when switching is being done at the crossing and when there is really no through train over same. We feel that the wording of the order which refers to the general order does not cover this feature and we would be glad to receive your comments as we feel that the railway company is quite prepared as agreed to give this additional protection it being of course understood that the entire installation and up-keep costs are to be borne by the railway."

Apparently there are two points outstanding: (1) the question of whether or not the Standard Specifications for Highway Crossing Signals, approved under General Order No. 468, govern the present case, or whether the proposed plan differs from the Standard Specifications. The answer to this is that the situation is governed by the plans which will be filed in the present case for approval by the Board's Engineer. The second point urged is that a special system should be installed to provide against unnecessary wigwagging when switching is being done at the crossing. On consideration of this submission, it would appear that the matter can be taken care of as follows: that the layout be so arranged that the bell and wigwag can be cut out during shunting operations, but go into operation automatically when a train enters the ringing section on the main line, and that shunting movements over the crossing, when the bell and wigwag have been cut out, be protected by one of the trainmen; and provisions should be made accordingly and order issue. (Reference may be made to Queen Street Crossing, Tilbury, Ont., Case 4610; and Talbot Street Crossing, Town of Essex, Ont., Case 588.)

September 16, 1933.

Commissioner Stoneman concurred.

ORDER No. 50333

In the matter of the application of the New York Central Railroad Company, hereinafter called the "Applicant Company," for authority to remove the gates required to be provided under the Order of the Board No. 9755, dated February 26, 1910, at Main Street, west of Comber Station, Ontario, on the line of the Canada Southern Railway, and substitute wigwag signals therefor.

File No. 9437.133

MONDAY, the 18th day of September, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*
J. A. STONEMAN, *Commissioner.*

Upon hearing the application at the sittings of the Board held at Chatham, April 7, 1933, in the presence of counsel for the applicant company and the township of Tilbury West; and upon reading the further written submissions filed, and the report and recommendation of the Chief Engineer of the Board,—

It is ordered:

1. That leave be, and it is hereby, granted the applicant company to install, in lieu of the gates required to be maintained by the said Order No. 9755, automatic bells and wigwags at the crossing of Main street, west of Comber Station, in the province of Ontario, on the line of the Canada Southern Railway, in accordance with "The Standard Specifications for Highway Crossing Signals," approved under General Order No. 468; that the layout be so arranged that the bells and wigwags can be cut out during shunting operations, but go into operation automatically when a train enters the ringing section on the main line; and that shunting movements over the crossing, when the bells and wigwags have been cut out, be protected by one of the trainmen.

2. That a detail plan showing the layout of the said bells and wigwags be submitted for the approval of an engineer of the Board.

3. That the cost of installing and maintaining the said bells and wigwags, the removal of the gates, and the warning sign which the township agrees to erect on the highway at the point of crossing, be borne and paid by the applicant company.

4. That orders No. 9755 and No. 10022, dated respectively February 26, 1910, and March 25, 1910, made herein, be, and they are hereby, rescinded.

C. P. FULLERTON,
Chief Commissioner.

Application of the Michigan Central Railroad Company, per Saunders, Kingsmill, Mills & Price, Toronto, Ont., for an Order authorizing the installation of wigwag signals and alarm bells as protection instead of the existing gates, at Talbot Street Crossing, Town of Essex, Ontario, and that the said Town of Essex, Ont., contribute towards whatever form of protection is ordered at this point.

Case No. 588

JUDGMENT

McLean, Assistant Chief Commissioner:

Application is made for an order authorizing the installation of wigwag signals and alarm bells in place of the existing gates at Talbot street crossing, town of Essex, Ont. In the application as launched the cost of maintenance is emphasized. It is stated that at present, as a result of Order of December 7, 1932 (Order No. 49285), the Michigan Central bears the whole cost of maintenance and operation of gates, amounting to $4,260 per annum. The cost of bell and wigwag signals is given as $1,740. In asking for bell and wigwag installation the railway asks that if the municipality does not consent, it should pay a part of the cost of maintenance and operation of gates if it insists on gates being employed. The railway states its willingness to bear the cost of installation and maintenance (p. 725). The bell and wigwag service which is proposed is a twenty-four hour service.

In this matter, as is pointed out in dealing with Queen Street crossing, Tilbury, Ont., there must be borne in mind, not only the economies of operation attaching to a particular type of protection, but also the question of safety. Except where there is absolute separation of grades, there is always a factor of danger dependent on the human element. If people approach a crossing without reasonable care, they are inviting danger, and an accident is likely to occur. On the other hand, absolute care would make the most dangerous crossing absolutely safe. The fact that accidents may happen at gates is shown in the fact that during the period 1921 to 1932, there have been twenty-six occasions when the gates at this crossing were crashed into by motor cars. In the records of the Board are contained, from time to time, the reports on dangerous practices of motorists, drivers of other vehicles, and of pedestrians at protected highway crossings. The report covering December 1, 1932, to February 28, 1933, appears in volume 23 of the Board's Judgments and Orders of April 19, 1933 (see pp. 11 to 18, inclusive). This shows seven cases where the motor car ran into a train, and forty-two cases where gates were crashed by motor cars. In the period from November 1, 1932, to January, 1933, gates were crashed in four cases. At Saint John, New Brunswick, between December 2, 1932, and February 3, 1933, three gates were crashed. At Chatham, Ont., between November 26, 1932, and December 17, 1932, five gates were crashed.

These examples are given, not with a view to claiming that the test in any final way proves the inefficiency of the gate system. It may, however, be inferred as pointed out, that no matter what type of protection is used, the human factor is important.

Mr. Charles E. Hill, General Safety Agent, New York Central lines, was called as a witness by the Michigan Central at the hearing of the above application which took place at Chatham, Ont. He stated he had for ten years occupied the position of general safety agent. On December 31, 1932, on the whole New York Central lines there were 1,970 crossings protected by visual signals; 492 protected by gates; 712 by watchmen, and 392 by alarm signals. This gives a total of 3,566 protected crossings, and approximately 53 per cent of these were protected by visual signals. He stated that the proportion of the crossings protected by visual signals had been rapidly increasing for the past six or seven years and that this was due to the fact that that type of signal was adopted by the American Railway Association. Asked more particularly what was the position on the Michigan Central Railroad, he stated that at the end of 1932 there were 714 crossings on the Michigan Central Railroad having some type of protection, and of that number 544 had visual protection.

As has already been pointed out, the human factor is always important, and, therefore, it would not be reasonable, even if one desired to make such a comparison, to compare the efficiency of the different crossings in terms of the number of accidents taking place at each crossing. Mr. Hill, at p. 698, vol. 606, said: "On the Michigan Central as a whole, during the years 1931 to 1932, there were 86 crossings protected by gates, and at these crossings there were 11 accidents. We had 105 protected by wigwag signals, and at these there were just two accidents. The volume of traffic, I would say, is practically the same at all these crossings; I mean it would average the same." He stated that for the years 1931 and 1932 on the Canada division of the Michigan Central Railroad there were 89 crossings protected by wigwag signals, and that they produced two accidents during these two years. There were 13 crossings protected by gates, and they produced two accidents. In referring to accidents he meant those in which personal injury was involved. He stated that since the visual signal had been made standard, the general practice on the New York Central lines, as well as its controlled lines, had been to substitute visual signals for gates. The following is excerpted from Mr. Hill's examination:—

> "Q. I believe you have looked into the Canada Southern situation?—A. Yes. For the years 1931 and 1932 on the Canada Division of the Michigan Central Railway there were 89 crossings protected by wigwag signals, and they produced only two accidents during those two years. We had only 13 crossings protected by gates, and they produced two accidents. When I refer to accidents I refer to those where personal injury was involved. On that basis the relative efficiency as between gates and wigwags would be in about the proportion of 1 to 7.
>
> "Q. In favour of what?—A. In favour of the wigwag.
>
> "Q. Based on this information which you have secured, and your experience over a ten-year period, what observations can you make regarding the visual signal and the wigwag, which is one of the forms of visual signals, and the gate crossings?—A. Well, my experience or observation has been based on analyses made from time to time, that the visual signal is superior, due to the fact that it functions 24 hours during the day; there is no human element involved. In all of the experiences we have had on our lines, we have never yet had a failure reported where an accident has occurred. In the operation of gates we have to depend upon the human element, and it is not infallible; it occasionally makes mistakes. Further-

more, the visual signal has been standardized throughout the country. The safety departments of the various railroads, especially the Safety Department of the American Railway Association, which takes in Canada, has given a great deal of publicity through posters and magazines, before public bodies, by having miniature signals displayed at the various large stations and other places, so that we have been trying to educate the public as to what a signal is and what it means.

"Q. To your knowledge have there been any recent installations of gates?—A. Not to my knowledge. I do know that it is our policy, and has been since the visual signal was made standard about six years ago, not to install any gates, but the substitution of visual signals for gates. In my experience for the past number of years, when any improvement has been made, we have adopted it."

I think that order should go providing for bells and wigwags. I recommend that double bell and wigwag be installed at Talbot Street crossing and an additional bell and wigwag at the angle of Victoria and Talbot streets, detailed plans to be filed for approval of an engineer of the Board.

The order should make provision for cutting out the bell and wigwag, and providing protection at the crossing by means of one of the trainmen when shunting is going on and the train has been left at the west-bound track, resulting in bell and wigwag operating unnecessarily.

September 15, 1933.

Commissioner Stoneman concurred.

ORDER No. 50338

In the matter of the application of the New York Central Railroad Company, hereinafter called the "Applicant Company," for leave to substitute bells and wigwags for the existing gates at the crossing of Talbot street by the Michigan Central Railroad, in the Town of Essex and Province of Ontario.

Case No. 588.

MONDAY, the 18th day of September, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*
J. A. STONEMAN, *Commissioner.*

Upon hearing the application at the sittings of the Board held at Chatham, April 7, 1933, in the presence of counsel for and representatives of the applicant company, the town of Essex, and the Department of Public Highways for the Province of Ontario, and what was alleged; and upon reading the further written submissions filed, and the report and recommendation of the Chief Engineer of the Board,—

It is Ordered:

1. That leave be, and it is hereby, granted the applicant company to install, in lieu of the existing gates, double bells and wigwags at the said crossing of Talbot street by the Michigan Central Railroad, and an additional bell and wigwag at the angle of Victoria and Talbot streets, in the town of Essex and

province of Ontario, in accordance with "The Standard Specifications for Highway Crossing Signals" approved under General Order No. 468: Provided the layout be so arranged that the bells and wigwags can be cut out when shunting is going on and the train has been left on the westbound track; and that shunting movements over the crossings, when the bells and wigwags have been cut out, be protected by one of the trainmen.

2. That a detail plan showing the layout of the said bells and wigwags be submitted for the approval of an Engineer of the Board.

3. That the cost of installing and maintaining the said bells and wigwags be borne and paid by the applicant company.

C. P. FULLERTON,
Chief Commissioner.

Application of the Michigan Central Railroad Company for an Order authorizing it to substitute for the present crossing gates, wigwag and automatic bells at Queen Street crossing, Tilbury, Ont.

Case No. 4610

JUDGMENT

McLean, Assistant Chief Commissioner:

At the crossing in question the double track of the railway crosses the street nearly at right angles. About 75 feet north of the north rail, Louise street (No. 18 Highway) enters Queen street from the west. The plan shows that there is a fairly good view of approaching trains except from the southwest angle of the crossing, where the view is somewhat obstructed by an elevator. When 93 feet from the crossing a train can be seen 230 feet away, and when 64 feet from the crossing it can be seen 780 feet away. The crossing is protected at the present time by gates and watchmen at an expense of $2,400 per year. The company desires to substitute automatic bells and wigwags for the gate protection at an expense of $1,915 for construction, and $60 per annum for maintenance.

The municipality objects strongly to the replacement of the gates by bell and wigwag. The application of the railway is on the ground of economy. It goes without saying, however, that economy would not be sufficient in itself, and that the question of safety in connection with the protective devices installed is exceedingly important.

The town opposed the application for various reasons, the principal of which was that there was considerable shunting in the vicinity of the crossing, and that the signals therefore would give false indications. The company promised to take care of this by installing a cut-out switch which would cut out operation of the bells and wigwags by shunting trains, but would not prevent their operation by trains passing on the main line. It was also proposed that one of the trainmen protect the crossing during the period when shunting operations were going on, and the bells and wigwags were out of operation.

There has been a steady increase in the installations of automatic signals. Out of 1,095 crossings reported by the leading railways of Canada protected by watchmen, gates and bell and wigwag, flashing light and bell, electric bell, lightning flash and bell, four hundred and forty (440) are protected by bell and wigwag; two hundred and seventy-nine (279) by electric bell; and forty-three (43) by flashing light and bell, and lightning flash and bell.

There always is an element of danger in connection with the approach to a level crossing. This element of danger is due in a great many cases to lack

of care in the approach, and the difficulties in this regard have been increased by the development of motor traffic. At the level crossing, no matter what kind of protection is installed, safety demands the co-operation of the one using the highway. The records which have been adduced before the Board in many cases involving protection, show that crashing of gates is not an uncommon factor. Bells and wigwags would appear to be as effective as gates in calling attention to the fact that the train is coming. If the motor car driver is so far from the crossing when the gates ascend as not to observe them, there is nothing in motion when he arrives to call his attention to them. It would appear from the numerous cases of motors running into gates, that at times they are not observed in time for the motorist to stop before running into them. When he does run into them the chances are that he puts on the brakes automatically, and stops on the rails. On the other hand, the wigwags are in motion if he comes up to a crossing when the train is approaching, and if he fails to observe them in time, there is no gate crashing to cause him to put on his brakes automatically, and he stands a better chance of getting away before the train reaches the crossing.

Statistics point to bells and wigwags being as safe as gates. In the five years 1927 to 1932, there have been in Canada 114 accidents at crossings protected by bells and wigwags. At the same time, there have been 59 accidents at crossings protected by gates. The number of crossings protected with bells and wigwags (440) is to the number of crossings protected by gates (235) as 1·9 to one; while the number of accidents is in the same ratio.

In the latter part of 1928, the question came up of the substitution at certain crossings on the Canadian Pacific Railway, at Chatham, Ont., of bells and wigwags for gates already in place. By Order 42004, of January 2, 1929, in the case of King street, permission was given to make a trial substitution good for one year, it being provided that, unless the city of Chatham was satisfied with the installation of the bells and wigwags, the railway company should revert to the original gate protection. By Order 49488, a similar provision is made in regard to Adelaide street.

Some correspondence was exchanged towards the end of the trial period. On February 3, 1931, however, the matter was taken up by the City Council and it was decided, as set out, that the bells and wigwags were operating with reasonable satisfaction. The council approved of the continuance of the bell and wigwag system subject to such adjustment as may appear to be necessary to insure public safety from time to time. No further representations in regard to these installations are to be found in the records of the Board.

On consideration it would appear that the installation of bells and wigwags would give a reasonable form of protection, always assuming as is necessary if protection is to be effective, that there should be reasonable care taken by the user of the highway. Relatively heavy traffic over the crossing is admitted.

An analysis of the methods of protection shows an increase in use of bells and wigwags and other visual signs in the field of protection. Where electric bells were used there has been a steady movement to improve the situation by installing bells and wigwags or other visual signs. This has been noticeable both in Canada and the United States in the last seven or eight years, and the change has been coincident with the adoption of standards. The bell and wigwag has the advantage of being more economical than the gate. This by itself would not be conclusive, but in addition to the railway economies of the bell operation, a study of the situation shows that with reasonable care the bell and wigwag affords a very safe form of protection.

I am of opinion that double bells and wigwags should be installed at Queen Street crossing, and that an additional bell and wigwag should be installed at the angle of Louise and Queen streets. The order should make provision for

cutting out the bells and wigwags, and providing protection at the crossing by means of one of the trainmen when shunting is going on and the train has been left at the west-bound track, resulting in bells and wigwags operating unnecessarily. Detailed plans should be filed for the approval of an Engineer of the Board. The railway is consenting to the cost of installation and the cost of maintenance being upon it.

September 15, 1933.

Commissioner Stoneman concurred.

ORDER No. 50337

In the matter of the application of the New York Central Railroad Company, hereinafter called the "Applicant Company," for leave to substitute bells and wigwags for the gates required to be maintained at the crossing of Queen Street by the Michigan Central Railroad, in the Town of Tilbury and Province of Ontario, under the Order of the Board No. 15201, dated October 11, 1911, as amended by Order No. 15582, dated December 11, 1911.

Case No. 4610.

TUESDAY, the 19th day of September, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*
J. A. STONEMAN, *Commissioner.*

Upon hearing the application at the sittings of the Board held at Chatham, April 7, 1933, in the presence of counsel for and representatives of the applicant company, the town of Tilbury, and the Department of Public Highways for the province of Ontario, and what was alleged; and upon reading the further written submissions filed, and the report and recommendation of the Chief Engineer of the Board,—

It is Ordered:

1. That leave be, and it is hereby, granted the applicant company to install, in lieu of the gates required to be maintained by the said Order No. 15201 as amended by Order No. 15582, double bells and wigwags at the crossing of Queen street by the Michigan Central Railroad, in the town of Tilbury and province of Ontario, and an additional bell and wigwag at the angle of Louise and Queen streets, in accordance with "The Standard Specifications for Highway Crossing Signals" approved under General Order No. 468: Provided the layout be so arranged that the bells and wigwags can be cut out when shunting is going on and the train has been left on the westbound track; and that shunting movements over the crossing, when the bells and wigwags have been cut out, be protected by one of the trainmen.

2. That detail plans showing the layout of the said bells and wigwags be submitted for the approval of an Engineer of the Board.

3. That the cost of installing and maintaining the said bells and wigwags be borne and paid by the applicant company.

4. That the said Orders No. 15201 and No. 15582, dated respectively October 11, 1911, and December 11, 1911, be, and they are hereby, rescinded.

C. P. FULLERTON,
Chief Commissioner.

Complaint of Firstbrook Boxes Limited, Toronto, in connection with rates on mill refuse

File No. 38781

JUDGMENT

By the Board:

Firstbrook Boxes Limited claim that the words "material for fuel only," shown in Canadian Pacific Railway Company's Tariff, C.R.C. No. E-4620, signify the name of a commodity upon which Rate Basis "D" should apply, and that there is no restriction as to the use of Edgings, Mill Refuse and Slabs.

The railways claim the above words are printed in a different form of type for the express purpose of indicating their qualitative nature in connection with rates on Edgings, Mill Refuse and Slabs, and have always been so interpreted.

In Canadian Pacific Railway Company's Tariff, C.R.C. No. E-2917, effective February 1, 1915, and succeeding Tariff, C.R.C. No. E-3225, effective December 1, 1916, there are shown mileage rates on "Cordwood, Slabs and Edgings, Mill Refuse (material for fuel only), Sawdust and Shavings, carloads." In the tariff first named, there were two scales of rates, one applying on Cordwood, Shavings and Sawdust. and the other, a lower scale, applying on Slabs, Edgings and Mill Refuse. In the tariff last named, as a result of the Board's direction in Eastern Rates Case, Cordwood alone remained in the higher scale, and Shavings and Sawdust were added to the lower scale.

In Tariff, C.R.C. No. E-3609, effective March 1, 1919, superseding C.R.C. E-3225, there was a change in the set up of the commodity descriptions, and the Scale "C" rates applied on "Cordwood (material for fuel only)," with the lower Scale "D" rates applying on "Slabs, Edgings, Mill Refuse (material for fuel only), Shavings and Sawdust."

C.R.C. No. E-3609 was cancelled by C.R.C. No. E-3818, effective January 1, 1921, and the description therein is exactly the same as in the preceding tariff and above set out.

Tariff, C.R.C. No. E-4620, effective April 20, 1933, cancelling C.R.C. E-3818, reads: "Cordwood (material for fuel only)"; "Edgings, Mill Refuse, Slabs, (material for fuel only), Sawdust and Shavings." The words "material for fuel only," in both the above descriptions, are shown in light-face type, and the balance of the wording in heavy-face type, and, from a perusal of the commodity descriptions of the various items shown on page 31 of this tariff, it is clear that the light-face is merely descriptive of the commodity named in the heavy-face type.

In Supplement No. 5 to Tariff, C.R.C. No. E-4620, effective August 4, 1933, the last commodity description as contained in the original tariff, as above quoted, has been changed to read as follows:—

"Edgings
Mill Refuse } (For fuel purposes only.)
Slabs
Sawdust and Shavings."

The words "for fuel purposes only" are in light-face type, while the names of the commodities themselves are in heavy-face type.

Reference to the Canadian National Railways' tariffs shows that since 1924 their corresponding item has read as follows:—

"Edgings
Mill Refuse } (For fuel purposes only.)
Slabs
Sawdust
Shavings."

See Tariffs, C.R.C. Nos. E-684, E-915, E-1221, E-1763 and E-1954.

As bearing on the clear intention that rates on these commodities apply only when for fuel purposes, it is noted that in Order in Council P.C. No. 1863, dated July 27, 1918, the increase allowed was one cent per 100 pounds, on "Cordwood, Slabs and Mill Refuse, for fuel purposes." Then, in the judgment covered by General Order No. 308, for the September, 1920, increase in rates, it is stated: "The increase in the rates on Cordwood, Slabs, Edgings and Mill Refuse, all for use exclusively as fuel, should be limited to 10 per cent." In General Order No. 351, dated November 26, 1921, covering the decrease in rates effective December 1, 1921, it is provided that "Rates on Cordwood, Slabs, Edgings and Mill Refuse, for fuel purposes, be restored to the basis in effect prior to September 13, 1920."

If complainants' interpretation were a proper one, in connection with Edgings, Mill Refuse and Slabs, the same effect should be given to identical words in connection with Cordwood, although the Rate Basis is shown for that commodity as "C," a higher classification. Also, any forest product, when used for fuel, would, under complainants' contention, be entitled to Rate Basis "D."

With regard to mileage rates on page 51 of Tariff, C.R.C. No. E-4620: all the commodities for which rates are shown are printed in heavy-face type, and qualifications are printed in light-face type. For example: Pulpwood is shown as taking Rate Basis "A";

PULPWOOD—for manufacturing and reshipment via Canadian Pacific Railway—Rate Basis "F."

CORDWOOD (Material for fuel only)—Rate Basis "C."

CORDWOOD, for Excelsior Manufacturing Purposes—Rate Basis "E."

EDGINGS, MILL REFUSE, SLABS, material for fuel only, SAWDUST and SHAVINGS —Rate Basis "D."

In Supplement No. 5 to the Tariff, the set-up of the item was somewhat changed, as previously shown, but the application was not changed, and the reference mark indicating "change in wording which results in neither increase nor reduction in charges" was properly shown.

Under Canadian Pacific Railway Company's Tariff, C.R.C. No. E-4620, Rate Basis "D" is applicable on Edgings, Mill Refuse and Slabs, for fuel only.

OTTAWA, September 21, 1933.

ORDER No. 50352

In the matter of the complaint of Firstbrook Boxes Limited, of Toronto, Ontario, against the rates on mill refuse covered by the last item on page 2 of Supplement No. 5 of the Canadian Pacific Railway Company's Tariff C.R.C. No. E-4620.

File No. 38781.

SATURDAY, the 23rd day of September, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*

S. J. MCLEAN, *Assistant Chief Commissioner.*

Upon reading the submissions filed in support of the complaint and on behalf of the Canadian Pacific and the Canadian National Railway Companies,—

The Board declares: that, under the Canadian Pacific Railway Company's Tariff C.R.C. No. E-4620, Rate Basis "D" is applicable on Edgings, Mill Refuse and Slabs, for fuel only.

C. P. FULLERTON,
Chief Commissioner.

Application of the Town of Renfrew, Ontario, for approval of proposed change in gate system and installation of a more up-to-date signal system at Raglan Street Crossing of the Canadian Pacific Railway at Renfrew, Ontario, and that the cost of installation and operation of the proposed system be borne by the C.P.R. Company and the Ontario Highways Department.

File 686.

JUDGMENT

By the Board:

Order No. 7591 of July 6, 1909, provided for the erection and maintenance of gates at Raglan Street crossing in the town of Renfrew. It was provided that there was to be a gateman in charge of said gates at all times. One-third of the wages of the man in charge of the gates was to be paid by the town of Renfrew.

Under date of June 23, 1933, the town of Renfrew asked for a change in regard to the protection. Their letter reads as follows:—

> "We have had under consideration for some time the advisability of asking for a change in our gate system on Raglan street in the town of Renfrew.
>
> "The system now in use is a system of drop gates which closes the street and requires three men in shifts of eight hours each to operate.
>
> "We have been paying our proportion of this gate for some years and this is a considerable burden on the town's finances.
>
> "This gate is on the Main street of Renfrew which is part of the provincial highway system running from Arnprior through to Pembroke and north and we feel at this time that there should be a more up-to-date and approved signal system than is now in vogue at the present time and which can be operated at considerably less expense as we understand that these electric bells and signals are automatic on the approach of a train.
>
> "Regarding the cost of the installation and operation of this signal system we feel that this should be borne by the Canadian Pacific Railway Company and the Ontario Highway Department.
>
> "We have written Mr. Williams of Smiths Falls who is the superintendent of this division and he advised us that an application should be made to you which they will not oppose."

Correspondence has taken place in the matter involving representations by the Highways Department of the Province of Ontario, the Canadian Pacific Railway Company, and the town of Renfrew.

The estimated cost of the bell and wig-wag protection asked for is $2,525 for installation. Maintenance is estimated at $325 per annum.

While it is indicated the town in the first instance asked to be relieved from contribution to the cost of protection, it is now willing to bear 25 per cent of the cost of installation. In its letter of September 14, it proposes that the cost be divided, Canadian Pacific Railway Company 50 per cent; town of Renfrew 25 per cent; Department of Highways 25 per cent.

The Department of Highways in its letter of September 18 states that it is willing to bear one-third of the town of Renfrew's liability.

The railway company in letter of August 24, proposes that the cost of installation and maintenance should be divided, one-third on the railway; one-third on the Department of Highways for the Province of Ontario; one-third on the town of Renfrew.

The following division of cost for installation appears to be reasonable: 40 per cent out of the Unemployment Relief Fund; 30 per cent on the railway company; 20 per cent on the town of Renfrew; and 10 per cent on the Highways Department.

The average contribution to wages made annually by the municipality in connection with the gates now in place amounts to $1,051.20. The cost of maintenance covering wages and all other maintenance costs should be divided, one-third on the Highways Department; one-third on the railway company; and one-third on the town of Renfrew. The town of Renfrew under this proposal will pay approximately $109 as compared with $1,051 it has been paying annually.

OTTAWA, September 22, 1933.

ORDER No. 50353

In the matter of the application of the Municipality of the Town of Renfrew, in the Province of Ontario, hereinafter called the "Applicant," for the installation of a bell and wigwag at the crossing of Raglan street by the Canadian Pacific Railway, in lieu of the gates maintained at the said crossing under the Order of the Board No. 7591, dated July 6, 1909.

File No. 686

SATURDAY, the 23rd day of September, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

Upon reading what is filed in support of the application and on behalf of the Department of Highways for the Province of Ontario and the railway company; and upon the report and recommendation of the Assistant Chief Engineer of the Board,—

It is ordered:

1. That, within ninety days from the date of this order, the Canadian Pacific Railway Company install double wigwags and a bell, in lieu of the existing gates, at the said crossing of Raglan street, in the town of Renfrew and province of Ontario, in accordance with the Standard Specifications for Highway Crossing Signals, approved under General Order No. 468; a detail plan showing the layout thereof to be submitted for the approval of an Engineer of the Board.

2. That forty per cent of the cost of installing the said bell and wigwags, not exceeding, however, the sum of $1,010, be paid out of the Railway Grade Crossing Fund from the amount appropriated to this fund under the Unemployment Relief Act, 1930, approved by the Governor in Council under Order in Council P.C. 2582, dated November 5, 1930; and that thirty per cent be paid by the Canadian Pacific Railway Company, twenty per cent by the town of Renfrew, and ten per cent by the Department of Highways for the Province of Ontario.

3. That the cost of maintaining the said bell and wigwags be borne and paid one-third by the railway company, one-third by the Department of Highways for the Province of Ontario, and one-third by the town of Renfrew.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 50310

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Martime Freight Rates Act.

File No. 34822.12

MONDAY, the 11th day of September, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the tolls published from Milltown, New Brunswick, to Grand-Mere, Quebec, in item 220C of Supplement No. 51 to Tariff C.R.C. No. E-4312, filed by the Canadian Pacific Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls for the purpose of reimbursements under subsection 3 of section 9 of the said Act, on traffic carried under the said item 220C of Supplement No. 51 to Tariff C.R.C. No. E-4312, approved herein, are as follows:—

Rates in cents per 100 pounds

Carloads	Less than carloads
52½	78

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 50312

In the matter of the application of the Canadian National Railways for an inquiry and hearing by the Board and a determination in the matter of a dispute between the Canadian National Railway Company, the Canadian Pacific Railway Company, and the Northern Alberta Railways Company in respect of an agreement dated January 29, 1929, and the provisions of Chapter 48 of the Statutes of Canada, 1929, the dispute arising over the interpretation of the words "and destined via Edmonton or Morinville to competitive points on or beyond the lines of the parties" contained in Clause 7 of the said agreement;

And in the matter of the application of Canadian Pacific Railway Company under Section 52 (3) of the Railway Act, for leave to appeal to the Supreme Court of Canada from the Order of the Board No. 50139, issued upon the above application on the 12th day of July, 1933, upon a question which, in the opinion of the Board, is a question of law.

File No. 38702

TUESDAY, the 12th day of September, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

Upon hearing the application in the presence of counsel for Canadian Pacific Railway Company and Canadian National Railway Company, and what was alleged,—

It is ordered: That the applicant, the Canadian Pacific Railway Company, be and it is hereby granted leave to appeal to the Supreme Court of Canada

from Order No. 50139 of the Board of Railway Commissioners for Canada pronounced on the 12th day of July, 1933, upon the following question which, in the opinion of the Board, is a question of law, viz:—

Whether upon the agreement made between the Canadian National Railway Company and the Canadian Pacific Railway Company on the 29th day of January, 1929, and the facts and circumstances hereinafter set forth, grain shipped from stations on the Northern Alberta Railways to Prince Rupert or to Victoria for export, and exported from either of those ports to say the United Kingdom, is to be excluded from the comparison of freight traffic for the purpose of the equal division to be made under article 7 of the agreement as not being "outbound freight traffic destined to competitive points on or beyond the lines of the parties" as the expression is used in said article.

The question arises upon the agreement above mentioned, and upon the following facts and circumstances:—

1. The Northern Alberta Railways comprise lines of railway situated in the northern part of the province of Alberta, connecting with the Canadian Pacific Railway at Edmonton and with the Canadian National Railway at Edmonton and Morinville.

2. They are the property of the Northern Alberta Railways Company, the capital stock of which is held by the Canadian National Railway Company and the Canadian Pacific Railway Company, jointly acquired by them under the authority of and pursuant to chapter 48 of the Dominion Statutes of 1929, and the agreements which form schedules "A" and "C" to that Act, a copy of which is attached to this order.

3. The chief industry of northern Alberta is agriculture and the principal traffic on the Northern Alberta Railways consists of grain shipped for export from Canada, which each of the railways, the Canadian National and the Canadian Pacific, has at all times been desirous of securing for transport over its lines from the Northern Alberta Railways to the seaboard.

4. The Pacific coast seaports from which grain is exported from Canada were and are Vancouver, New Westminster, Victoria, and Prince Rupert, in the province of British Columbia. Of these, Vancouver and New Westminster are reached by both the Canadian Pacific Railway and the Canadian National Railway, and Prince Rupert by the Canadian National alone. Victoria is reached by transporting the loaded cars of grain on barges from Port Mann on the Canadian National Railway near Vancouver, the distance thereto being 78 miles. The Canadian Pacific does not undertake the carriage of grain to Victoria by such a service. The bulk of the grain carried by each railway to these ports for export is taken to and exported from Vancouver.

5. The Canadian National's line to Prince Rupert was originally part of the Grand Trunk Pacific Railway, and its line to Vancouver was originally part of the Canadian Northern Railway system. On September 2, 1925, coincidentally with the construction of the Government elevator at Prince Rupert, the Canadian National Railways issued a tariff of export grain rates from stations on its railway to Prince Rupert and these rates were the same as the export grain rates from the same stations to Vancouver (Tariff No. W.135-C, C.R.C. No. W.357, Supplement No. 15). Under the same date export grain rates from points on the Alberta and Great Waterways Railway to Prince Rupert via the Canadian National Railways were also put into effect on a parity with similar rates via Canadian National Railways to Vancouver (A.G.W. No. 123, C.R.C. No. 105, Supplement No. 7). Upon the termination of the Alberta Government agreement in 1926 the Canadian National published to Prince Rupert from points on the Edmonton, Dunvegan and British Columbia, Alberta and Great Waterways, and Central Canada Railways, export rates on the Vancouver basis (C.N. Tariff

No. W.135-D, C.R.C. No. W.432, Supplement No. 8). On October 12, 1927, the Canadian National Railways published similar rates from points on the Pembina Valley Railway to both Vancouver and Prince Rupert, as shown in Supplement 1 to Canadian National Railways Tariff W.135-F, C.R.C. W.546.

6. At the time of their acquisition in 1929 the Northern Alberta Railways were owned or controlled by the Government of Alberta; part of them, known as the Pembina Valley Railway, having been constructed by the Government, and the remainder, consisting of the railways of the Edmonton, Dunvegan and British Columbia Railway Company, the Central Canada Railway Company, and the Alberta and Great Waterways Railway Company having come into its hands through the insolvency of those companies.

7. From 1920 to 1926, as the result of the agreement set out in chapter 56 of the Statutes of Alberta, 1921, joint rates on grain shipped for export from stations on the Edmonton, Dunvegan and British Columbia and Central Canada Railways were established and maintained exclusively in connection with the Canadian Pacific Railway, and joint rates from stations on the Alberta and Great Waterways Railway Company in connection with both the Canadian Pacific and Canadian National Companies. In 1926 the Government terminated the agreement and all joint tariffs in connection with the Canadian Pacific were cancelled, and from that time until the acquisition of the lines by the Northern Alberta Railways Company in 1929, under agreement dated November 11, 1926, a copy of which is attached hereto, joint rates were maintained in connection with the Canadian National Railway Company exclusively.

8. Since 1929 joint rates on grain have been published by the Northern Alberta Railways Company and the Canadian Pacific Railway Company from stations of the former to Vancouver and New Westminster for export, and by the Northern Alberta Railways Company and the Canadian National Railway Company to Vancouver, New Westminster, Victoria, and Prince Rupert for export (present C.N.R. Tariff No. W.135-F, C.R.C. No. W-546 and Supplements 36 and 42 thereto, and C.P.R. Tariff No. W.5769, C.R.C. No. W.2847 and Supplements 37, 41, and 43 thereto. The rates in the foregoing tariffs from Canadian National and Canadian Pacific points to Vancouver were made under Order of the Board of Railway Commissioners No. 448 of August 26, 1927. The mileage from Edmonton to Vancouver via the Canadian National Railways is 765 miles, and via the Canadian Pacific is 836 miles. The mileage from Edmonton to Prince Rupert is 957 miles. In the calculation of the rates to Vancouver, the Canadian National mileage from Edmonton to Vancouver is taken by the Canadian Pacific as its mileage from Calgary to Vancouver. By reason of competition, the Canadian Pacific accepts for carriage via its line from Edmonton to Vancouver the same rate as the Canadian National receives for carriage via its shorter mileage. In order to place Prince Rupert on an equality with Vancouver, the Canadian National published the same rates to Prince Rupert as were effective over its own line to Vancouver, thus extending lower rates to Prince Rupert than required by General Order No. 448).

9. These rates, and the terms and conditions of rail carriage, are the same from any Northern Alberta Railways station to all these seaports, whether routed via Canadian National Railway or Canadian Pacific Railway.

10. Export rates are lower than the domestic rates. For example: The rate on grain and grain products in carloads, from Grande Prairie on the Northern Alberta Railways to New Westminster and Vancouver via either the Canadian Pacific or the Canadian National, and to Victoria and Prince Rupert via the Canadian National, for export is 28 cents per one hundred pounds, while the domestic rate via either the Canadian Pacific or Canadian National is 52½ cents

per one hundred pounds to New Westminster and Vancouver, 55½ cents per one hundred pounds to Victoria, and via the Canadian National to Prince Rupert 58 cents per one hundred pounds.

11. Ocean rates on grain are not uniform, but by force of competition tend to equality.

12. Grain shipped to any of the above-mentionel ports for export is discharged by the railway into elevators at the said ports and there stored with grain of the same grade, and is no longer earmarked as grain of that shipment. When the shipper desires to export his grain an equivalent amount of grain of the same grade is subject to his order. The same practice is followed in all cases where grain is milled or stored in transit.

13. The port of Churchill on the Canadian National Railways is a port of export on the Atlantic coast to which grain from points on the Northern Alberta Railways may be carried under Canadian National Tariff No. W-485A, C.R.C. No. W.757. Outbound freight traffic to Churchill for export is dealt with by the Northern Alberta Railways Company for the purpose of article 7 of the agreement as being in the same category as similar traffic to Prince Rupert and Victoria.

14. The question of law above stated came before the Board for determination upon the application of the Canadian National Railway Company. A copy of the application, the answers of the Northern Alberta Railways Company and the Canadian Pacific Railway Company respectively, and the order of the Board and its reasons therefor, and the tariffs above mentioned, are appended to this order.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 50317

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act; the Order of the Board No. 43632, dated October 17, 1929, approving the toll published on coal from Minto to Marysville, New Brunswick, in Supplement No. 5 to Tariff C.R.C. No. 160, filed by the Fredericton and Grand Lake Coal and Railway Company; Order No. 43633, dated October 17, 1929, approving the tolls on coal to Marysville, New Brunswick, published in Supplement No. 5 to Tariff C.R.C. No. 125 filed by the New Brunswick Coal and Railway Company; and Order No. 45590, dated October 14, 1930, amending the said Order No. 43632.

File No. 34822.15

TUESDAY, the 12th day of September, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the tolls published on bituminous slack coal to Marysville, New Brunswick, in Supplement No. 13 to Tariff C.R.C. No. 160, filed by the Fredericton and Grand Lake Coal and Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried on and after September 23, 1932, under the said Supplement No. 13 to Tariff C.R.C. No. 160, approved herein, are as follows:—

From	Rates in cents per 100 pounds
Iron Bound Cove, N.B. Minto, N.B.	110
Pennlyn, N.B.	120

3. And the Board further orders that the said orders numbered 43632, 43633, and 45590, dated respectively October 17, 1929, October 17, 1929, and October 14, 1930, be, and they are hereby, rescinded.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 50328

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.12

FRIDAY, the 15th day of September, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the tolls published in items 17A, 1222, and 1386 of Supplement No. 24 to Tariff C.R.C. No. E-4632, filed by the Canadian Pacific Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said items 17A, 1222, and 1386 of Supplement No. 24 to Tariff C.R.C. No. E-4632 approved herein, are as follows:—

Item 17A	Rates in cents per 100 pounds
To Montreal, Que.	25
To Toronto, Ont.	33½
Item 1222	
To Belleville, Ont.	33
Brockville, Ont.	34½
Hamilton, Ont.	34
Kingston, Ont.	34
Montreal, Que.	29
Port Colborne, Ont.	34½
St. Catharines, Ont.	34½
Toronto, Ont.	33
Windsor, Ont.	41½
Item 1386	7

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 50329

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.12

FRIDAY, the 15th day of September, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*

S. J. MCLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the toll published in item 723 of Supplement No. 22 to Tariff C.R.C. No. E-4572, filed by the Canadian Pacific Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said item 723 of Supplement No. 22 to Tariff C.R.C. No. E-4572 approved herein, is 9 cents per 100 pounds.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 50330

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.12

FRIDAY, the 15th day of September, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*

S. J. MCLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the toll published in item 17 of Supplement No. 17 to Tariff C.R.C. No. E-4632, filed by the Canadian Pacific Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said item 17 of Supplement No. 17 to Tariff C.R.C. No. E-4632 approved herein, is 25 cents per 100 pounds.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 50334

In the matter of the application of the Canadian National Railways, hereinafter called the "Applicants," for permission to cancel, on less than statutory notice, the rate published in item 20 of Tariff C.R.C. No. E-2036, between Toronto and Merritton, St. Catharines and Thorold, Ontario.

File No. 27612.81

TUESDAY, the 19th day of September, A.D. 1933.

S. J. MCLEAN, *Assistant Chief Commissioner.*
Hon. T. C. NORRIS, *Commissioner.*

Upon its appearing that the said rate is applicable via the Niagara, St. Catharines and Toronto Navigation Company, and that the said company will cease navigation on September 24, 1933,—

It is ordered: That the applicants be, and they are hereby, permitted to cancel, upon three days' notice, but not later than September 24, 1933, the rate of 25 cents per 100 pounds now published in item 20 of Tariff C.R.C. No. E-2036.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 50335

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.2

TUESDAY, the 19th day of September, A.D. 1933.

S. J. MCLEAN, *Assistant Chief Commissioner.*
J. A. STONEMAN, *Commissioner.*

The Board orders: That the tolls published in the following tariffs filed by the Canadian National Railways under section 3 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of the said section 3, namely:—

Supplement No. 8 to Tariff C.R.C. No. E-1227.
Supplement No. 43 to Tariff C.R.C. No. E-1244.
Supplement No. 20 to Tariff C.R.C. No. E-1804.
Supplement No. 5 to Tariff C.R.C. No. E-1906.
Supplement No. 5 to Tariff C.R.C. No. E-1911.
Supplement No. 3 to Tariff C.R.C. No. E-1974.
Tariff C.R.C. No. E-2047.
Tariff C.R.C. No. 2049.
Tariff C.R.C. No. 2050.

S. J. McLEAN,
Assistant Chief Commissioner.

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The Board of

Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

Vol. XXIII Ottawa, October 15, 1933 No. 15

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Complaint of Mead Johnson and Company, Limited, Belleville, Ontario, relative to Freight Classification on less than carload shipments of "Mead's Cereal."

(File No. 33365.94).

JUDGMENT

FULLERTON, CHIEF COMMISSIONER:

Applicants complain that the railway company has erroneously interpreted the Canadian Freight Classification No. 18, C.R.C. No. 427, with the result that they have rated Mead's Cereal at second class, in less than carload lots, instead of fourth class.

Applicants allege that Mead's Cereal "is a cereal, advertised as a cereal, bought as a cereal, it is directly competitive to other known cereals, and offered to the defendants as a cereal." As such they allege that it should be rated under Cereal Products and Preparations N.O.I.B.N. under item 13, page 74 of the Canadian Freight Classification No. 18, C.R.C. No. 427 at fourth class, in less than carload lots.

In answer the defendants submit that the product "Mead's Cereal" is not a cereal on which the above rating should be applied. They allege that it is prepared food to which the rating "Food, Prepared N.O.I.B.N., item 11, page 142," should apply.

It does not follow from the fact that the product in question is called a cereal that it is necessarily a cereal within the meaning of the Classification. The word "cereal" comes from "Ceres," the Goddess of Grains and of the Harvest. In one of the standard dictionaries cereal is defined as follows:—

> "Of or pertaining to edible grain or farinaceous seeds, or to grasses that produce them.
>
> "The various kinds of cereal grain—such as corn, wheat, rice and maize—are the produce of true grasses.
>
> "A plant yielding grain or farinaceous seeds used for food, as wheat, maize, rye, oats, barley and millet.
>
> "The grain produced by such a plant, or a foodstuff made from it."

So far as the evidence shows the ordinary cereals on the market are composed solely of grain or grain products. These are sometimes flavoured by sweetening or salting, but in no case that we have heard of has there been any other element added.

Mead's Cereal is composed of seven different elements, three of which, namely; edible bone meal, alfalfa and dried brewer's yeast can hardly claim to come under the definition of cereal. It appears to me that adding these last named elements to the grain products of which it is composed makes Mead's Cereal a prepared food within the meaning of the Classification.

There is, however, an additional element which has an important bearing in this case and that is the fact that the applicants, while they call their product a cereal, place it on a much higher plane than a mere cereal. This appears quite clearly from a pamphlet published by the applicants and put in in evidence at the hearing. Accepting the applicants' own statements as set forth in this pamphlet, their product differs from well-known cereals such as, for example, Quaker Oats, Health Bran, Red River Cereal, Corn Meal, Toasted Oats, Wheatlets, Oatmeal, Rolled Oats, Farina and Rolled Wheat, in the following respects:—

1. It is primarily manufactured as a food for sick children.
2. It was devised in the Research Laboratories of the Hospital for Sick Children and the Department of Paediatrics, University of Toronto, and is regularly tested by the Paediatric Research Foundation of Toronto.
3. It was devised because it was thought that rolled oats, farina and ordinary cereals were extremely deficient in such vital elements as essential minerals and vitamins in appreciable amount.
4. It is advertised to physicians only.
5. It is exclusively licensed by the Paediatric Research Foundation of Toronto for production by the Mead Johnson Company.
6. It is marketed exclusively through drug stores.
7. It sells at a much higher price than ordinary cereals.

The principle is clearly laid down in the authorities that in arranging the classification of articles of commerce, their market value and the shippers' representations as to their character may properly be taken into account in ascertaining the analogy they bear to other articles, and determining the class to which they belong. See Warner v. The New York Central and Hudson River Railroad Company, 4 I.C.C. 32.

In Mead Johnson and Company v. Atlantic Coast Line Railroad Company, 168 I.C.C. 157, the question was raised as to the proper classification of Mead's Dextri-Maltose. Under the official and southern classification Maltose was rated third class in less than carloads and fifth class in carloads. Prepared foods, not otherwise indexed by name, were rated in less than carloads, second class in official and first class in southern, and in carloads third class in both classifications.

Dextri-Maltose was rated under the latter classification and the complainant contended that it came under the former. It was admitted that Dextri-Maltose was technically a Maltose and that the only material difference between it and the ordinary commercial Maltose was that more care was taken in the manufacture of the former with regard to sanitation and probably to standardization of formula. Another slight difference was that 2 per cent of sodium chloride or 3 per cent of potassium bicarbonate was sometimes added. The labels in use in the case of Dextri-Maltose showed the chemical analysis of the product and described it as sugar carbohydrate used in the feeding of infants and adults, with a further statement that detailed directions for its uses would be furnished by physicians. The product was advertised only in medical journals.

The finding was that Dextri-Maltose was properly classified under the southern and official classification as Prepared Food N.O.I.B.N.

In the Shell Petroleum Corporation v. Abilene and Southern Railway Company, 191 I.C.C. 147, decided in February of the present year, the rates on Shell Kleanzit, Shell Spot Remover and Shell Lighter Fluid were in question. These names are the trade names applied to a product which complainants asserted was merely gasoline. Complainants' contention was that these products should take the fifth class gasoline rates. The defendants on the other hand contended that rates of third class in less than carloads, and fourth class in carloads, applicable on cleaning, scouring or washing compounds, N.O.I.B.N. were proper for application on Kleanzit and Spot Remover, and that the rating second class, any quantity, was proper for Lighter Fluid.

The Commission held in favour of the defendants' contention and in the course of the report said:—

> "As stated in Mead Johnson and Company v. Atlantic Coast Line Railway, 168 I.C.C. 157, if a manufacturer finds it advantageous to describe his product in a manner calculated to give purchasers the impression that it is a different and higher grade article than it actually is, he cannot consistently complain if the carriers accept that description as the basis of the collection of freight charges."

The principles laid down in these cases are directly applicable to the case in hand. The applicants by their own statements have put forward their product as of a quality far superior to the ordinary cereals and as something mainly designed for the treatment of sick children under the guidance of physicians.

Under the circumstances I have no hesitation in holding that Mead's Cereal is a Prepared Food within the meaning of the classification.

September 28, 1933.

The Assistant Chief Commissioner and Commissioner Norris concurred.

ORDER No. 50383

In the matter of the complaint of Mead Johnson & Company of Canada, Limited, of Belleville, Ontario, relative to freight classification on less than carload shipments of "Mead's Cereal."

File No. 33365.94

SATURDAY, the 30th day of September, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*
Hon. T. C. NORRIS, *Commissioner.*

Upon hearing the complaint at the sittings of the Board held in Ottawa, September 26, 1933, the complainant company and the Canadian Freight Association being represented at the hearing, and what was alleged,—

It is ordered: That the complaint be, and it is hereby, dismissed.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 50363

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.2

MONDAY, the 25th day of September, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the joint rate on salt from Malagash, Nova Scotia, to St. Andrews, New Brunswick, published in item 40 of Supplement No. 14 to Tariff C.R.C. No. E-1241, filed by the Canadian National Railways under section 3 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 3 of section 3.

2. And the Board hereby certifies that the Canadian Pacific Railway Company's proportion of the normal toll for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said item 40 of Supplement No. 14 to the said Tariff C.R.C. No. E-1241, approved herein, is 10 cents per 100 pounds.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 50367

In the matter of the application of the Nipissing Central Railway Company, hereinafter called the "Applicant Company," under Section 330 of the Railway Act, for approval of its Standard Freight Mileage Tariff C.R.C. No. 121, on file with the Board under file No. 29168.

THURSDAY, the 28th day of September, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

Upon the report and recommendation of the Assistant Chief Traffic Officer of the Board,—

It is ordered: That the applicant company's Standard Freight Mileage Tariff C.R.C. No. 121, on file with the Board under file No. 29168, be, and it is hereby, approved; the said tariff, with a reference to this order, to be published in at least two consecutive weekly issues of the *Canada Gazette.*

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 50374

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.2

FRIDAY, the 29th day of September, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

The Board orders: That the tolls published in Supplement No. 24 to Tariff C.R.C. No. E-1504, Supplement No. 21 to Tariff C.R.C. No. E-1804, and Tariff C.R.C. No. 2054, filed by the Canadian National Railways under section 3 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 50375

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.12

FRIDAY, the 29th day of September, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the toll published in item 106 of Supplement No. 25 to Tariff C.R.C. No. E-4632, filed by the Canadian Pacific Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said item 106 of Supplement No. 25 to Tariff C.R.C. No. E-4632 approved herein, is 12½ cents per 100 pounds.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 50376

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.12

FRIDAY, the 29th day of September, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the toll published on woodpulp from St. George, New Brunswick, to Stanbridge, Quebec, in Supplement No. 8 to Tariff C.R.C. No. E-4304, filed by the Canadian Pacific Railway Company under section 9 of the Maritime

Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said Supplement No. 8 to Tariff C.R.C. No. E-4304 approved herein, is 23 cents per 100 pounds.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 50377

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.12

FRIDAY, the 29th day of September, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the toll published to Joliette, Quebec, in item 170A of Supplement No. 1 to Tariff C.R.C. No. E-4645, filed by the Canadian Pacific Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said item 170A of Supplement No. 1 to Tariff C.R.C. No. E-4645 approved herein, is 32 cents per 100 pounds; 1½ cents per 100 pounds to be deducted account of water haul.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 50389

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act; and the Order of the Board No. 50317, dated September 12, 1933, approving tolls published on bituminous slack coal to Marysville, New Brunswick, in Supplement No. 13 to Tariff C.R.C. No. 160 filed by the Fredericton & Grand Lake Coal and Railway Company.

File No. 34822.15

WEDNESDAY, the 4th day of October, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Asst. Chief Commissioner.*

Upon its appearing that an error has been made in connection with the normal rate certified in the said Order No. 50317,—

It is ordered: That the said Order No. 50317, dated September 12, 1933, be, and it is hereby, amended by striking out the words, "Rates in cents per 100 pounds," in paragraph 2 of the order, and substituting therefor the words, "Rates in cents per net ton."

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 50390

In the matter of the application of the Canadian National Railway Company, hereinafter called the "Applicant Company," under Section 276 of the Railway Act, for leave to carry traffic over its Hemaruka-Scapa Branch, between the points hereinafter described.

File No. 15832.56

WEDNESDAY, the 4th day of October, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Asst. Chief Commissioner.*

Upon the report and recommendation of the Chief Engineer of the Board, and the filing of the necessary affidavit,—

It is ordered: That the applicant company be, and it is hereby, granted leave to carry traffic over its Hemaruka-Scapa Branch, in the province of Alberta, between the following points, namely:—

1. From mileage 154·06 Loverna Westerly Branch of the applicant company (Hemaruka, Alberta) westerly to a junction with the Alliance-Youngstown Branch of the Canadian Pacific Railway Company at mileage 18·93, a distance of 11·72 miles.
2. From a junction with the said Alliance-Youngstown Branch, at mileage 17·74 westerly, to the junction with the Endiang Subdivision of the applicant company at mileage 92·31 (Scapa, Alberta), a distance of 28·79 miles.
3. South leg of the wye at the junction with the said Alliance-Youngstown Branch, at mileage 18·93, being 0·32 of a mile in length.
4. North leg of the wye at the junction with the said Endiang Subdivision, 0·27 of a mile in length.

Provided the rate of speed be limited to fifteen miles an hour.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 50391

In the matter of the Canadian National-Canadian Pacific Act, 1933.

File No. 38827

FRIDAY, the 6th day of October, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Asst. Chief Commissioner.*

Upon the application of the Canadian National Railway Company and the Canadian Pacific Railway Company, and its appearing that in order to give effect to the provisions of the Canadian National-Canadian Pacific Act, 1933, the said companies will find it necessary or expedient to agree upon co-operative measures, plans, and arrangements which, among other things, will involve the diversion or rerouting of traffic of one company over the lines of the other,—

It is ordered: 1. That whenever freight traffic, whether originating on the lines of the Canadian National Railway Company or the Canadian Pacific Railway Company or otherwise, is routed over the lines of one of the said companies for the whole or part of the carriage, and by arrangement between them made pursuant to the provisions of the Canadian National-Canadian Pacific Act, 1933, is diverted or rerouted so as to pass, for any portion of the carriage, over the lines of the other of such two companies, all the terms and conditions of the

contract of carriage entered into in respect of such traffic shall be applicable in the same manner and to the same extent as though such diversion and rerouting had not taken place.

2. That this order and regulation be published for three weeks in the *Canada Gazette*.

C. P. FULLERTON,
Chief Commissioner.

ACCIDENTS REPORTED TO THE OPERATING DEPARTMENT, BOARD OF RAILWAY COMMISSIONERS, FOR MONTH OF JULY, 1933

Railway accidents	168,	with 19	persons killed and	164 injured
Railway accidents at highway crossings	26,	with 15	persons killed and	40 injured
	194	34		204

	Killed	Injured
Passengers	—	33
Employees	6	99
Others	28	72
	34	204

DETAILS OF ACCIDENTS AT HIGHWAY CROSSINGS

No. of Accidents	
	Nova Scotia
1	Automobile—Auto driver failed to stop for crossing. Licence of auto not given.
	New Brunswick
1	Automobile—Ran into side of train. Licence N.B. F-2245.
	Quebec
2	Automobile—Ran into side of train. Que. licences, 102-490; T-2208.
4	Automobile—Failed to stop for crossing. Que. licences, H-8894; 110030; D. of C. G-3610; Mass. 376091.
1	Pedestrian—
	Ontario
2	Automobile—Ran into side of train. Ont. licences JH-492; KW-591.
4	Automobile—Auto driver failed to see or hear train. Ont. licence HA-282; Illinois 540725; 2 not obtained.
1	Automobile—Ran under lowered gates, struck by car being kicked into siding. Licence, Ont. W-2841.
1	Auto truck—Endeavoured to beat train over crossing. Licence, Ont. 20894-C.
1	Auto truck—Truck driver failed to see or hear train. Licence, Ont. 547-32-C.
1	Pedestrian—Boy failed to see or hear train.
	Manitoba
1	Automobile—Auto driver failed to see train. Licence, Man. 64733.
1	Auto truck—Truck driver failed to see train. Licence, Man. T-9-055.
1	Auto truck and trailer—Poor brakes on truck. Auto truck licence, Man. T-7-431; trailer licence, Man. 888.
	Alberta
1	Automobile—Auto driver failed to exercise proper care. Licence, Alta. 38-869.
1	Auto truck—Failed to stop clear of crossing. Licence, Alta. BT-2042.
1	Auto truck—Truck driver failed to keep proper lookout approaching crossing. Licence, Alta. T-10668.
	British Columbia
1	Automobile—Man jumped from auto and run over by train. Licence, B.C. 57-313.

Of the 26 accidents at highway crossings, 22 occurred at unprotected crossings and 4 at protected crossings. Twenty-four of the accidents occurred during the daylight hours, and 2 at night.

Ottawa, October 3, 1933.

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The Board of

Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

Vol. XXIII Ottawa, October 26, 1933 No. 16

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Dangerous Practices of Motorists, Drivers of Other Vehicles, and Pedestrians at Protected Railway Crossings.

Files 45.8.1; 45.8.3

In many cases accidents at highway crossings are due to the negligence of those driving automobiles and other vehicles and of pedestrians. This negligence is found both at unprotected and protected crossings.

The Canadian National Railway lines from March 1 to September 30, 1933, show forty-six cases where there was danger at protected crossings due to the negligence of those using the crossings.

The Canadian Pacific Railway (Western Lines) from January 1 to June 30, 1933, and (Eastern Lines) from February 1 to July 31, 1933, show a total of sixty-four cases.

Notwithstanding safety devices and cautionary signals, people take chances and disregard safety. Motor accidents are becoming more frequent. Every sane motorist deplores this.

The Board hopes that the press will give as much publicity as possible to what is covered in the statement, with the hope that it may educate motor drivers and others to be more careful at crossings.

If accidents are to be lessened, the sane motorists must educate the culpably negligent motorists, some of whose actions are recorded in the following lists:—

CANADIAN NATIONAL RAILWAY LINES

Date	Time	Crossing	Licence No. of Auto	Dangerous Practices
Mar. 27	11.30 a.m.	Travel Road, Morrisburg, Ont.	Ont. KA-52	Ran through and damaged gates.
" 29	10.50 K	Public crossing just east of station at Devlin, Ont.		Driver with team of horses and sleigh attempted to cross track without covering bare ground with snow. Sleigh slightly damaged.
" 31	12.05 a.m.	St. Charles Boromee St., Joliette, Que.	Que. X-1531	Driver did not stop auto before attempting to drive over crossing, resulting in collision.
April 12	17.25	Water Street, Winnipeg, Man.	Man. T-383	Ran by stop disk.
" 13		Kingston Road, Cobourg, Ont.	Ont. E-755	Driving too fast approaching railway crossing.

CANADIAN NATIONAL RAILWAY LINES—*Continued*

Date	Time	Crossing	Licence No. of Auto	Dangerous Practices
April 15	23.45 K.	Gladys Street, Dauphin, Man.	43-125	Driving into side of switch engine after being given signal to stop.
" 17		Mill Street, Saint John, N.B.	C.J. 630	Gates down, gong sounding, auto truck crashed into gates, breaking same.
" 18	12.58 p.m.	First Street, Collingwood, Ont.	Ont. E.O. 689	Driver of auto ran into engine. Whistles sounded and engine bell ringing.
" 29	17.35	Water Street, Winnipeg, Man.	Man. 7395	Ran by stop disk.
May 11	8.40 a.m.	Essa Street, Allandale, Ont.	Ont. N 3269	Ran through lowered gates breaking same. Driver claimed he could not stop in time.
" 26	8.42 a.m.	Sixth Street, Brandon, Man.	T-3-824	Ignored stop signal when engine almost at the crossing.
" 29	11.30 a.m.	Public crossing MP 30, Roberval SD, 1st public crossing north of St. Felicien Station, Que.	74987	Motor work car struck by auto on public crossing. Auto was not stopped nor speed reduced before going over crossing.
June 7	20.25 K.	Provencher Ave., Winnipeg, Man.	Man. 17413	Auto ran into side of engine against automatic warning signals, damaging auto.
" 10	10.15 a.m.	Logan Avenue, Toronto, Ont.	18082-C	Ignored warning signals and ran into gates to see how far he could spring them without breaking them.
" 10	12.40	Highway crossing just east of east switch, Chamberlain, Sask.	Sask. C.V. 108	Auto driver crossed track in front of engine. Pilot beam just missed rear end of truck.
" 12	5.53 p.m.	Kipling Avenue, New Toronto, Ont.	Ont. C-276	Disregarded "stop disk" and entered crossing immediately in face of approaching train. Train just missed car by a small margin.
" 26	9.10 p.m.	Private Crossing at Duhamel, Alta.	BT-2448	Careless driving on the part of the driver of the car.
" 26	11.10 a.m.	Charlotte Street, Peterboro, Ont.	L.W. 431	Careless driving.
July 13	14.27	Logan Avenue, Winnipeg, Man.	T-7431	Disregarded warning given by engine bell and whistle.
" 13	12.50 p.m.	Fleet Street, Toronto, Ont.	K-1313	Ignored stop signal and ran around traffic already stopped.
" 18	8.32 a.m.	Essa St. Crossing, Allandale, Ont.	N-5538	Car ran under gates when same were being lowered. No damage.
" 18	12.00 a.m.	Public Crossing MP 121·3, Unity Subd., Edmonton, Alta.	38869	Drove car on track in front of engine.
" 20	1.35 p.m.	William Street, Chatham, Ont.	W-2841	Driving south crashed lowered gates.
" 28	9.35 p.m.	Keele St., third crossing north of King Station, King, Ont.	F-8724	Auto stalled at side of crossing foul of track and struck by engine.
Aug. 2	9.20 a.m.	2nd crossing north of Inglewood station, Ont.	47641 C	Drove onto crossing in front of train and struck by oil-electric car. Crossing whistle sounded and bell ringing.
" 4	10.50 p.m.	Essa Street, Allandale, Ont.		Ran into gates while engine with cars passing over crossing. No damage done.
" 7	2.25 p.m.	First public crossing North of Utterson station, Ont.	CJ-419	Driver heard and saw train coming but brakes on auto not working and unable to stop before running into side of train.
" 8	14.13 K.	Waverley Street, Winnipeg, Man.	T-3-083	Did not look for train; disregarded warning of engine bell and whistle. Crossing protected by standard crossing signs.
" 10	5.40 p.m.	Eriksdale, Man.	C 1-307	Attempted to cross railway ahead of passenger train.

CANADIAN NATIONAL RAILWAY LINES—*Concluded*

Date	Time	Crossing	Licence No. of Auto	Dangerous Practices
Aug. 12	6.25 p.m.	Main St. Crossing, Glencoe, Ont.	DS-468	Not looking to see whether gates were up or down.
" 12	1.52 p.m.	Josephine Street, Wingham, Ont.	DH-205	Failed to stop for "stop signal" displayed. Had to make short turn left to avoid collision. Auto passed between watchman's shanty and main line.
" 15	1.05 p.m.	Ontario Street, Port Hope, Ont.	23267-C	Was parked too close to track. Train had to stop till truck got by.
" 22	11.30 K.	Fifth Street West, Red Deer, Alta.	51-777	Attempted to cross over track without ascertaining if same was clear, resulting in auto running into train, breaking off step of train.
" 25	3.15 p.m.	Moreau Street, Montreal, Que.	F-2565	Driver of auto started across before gateman had time to raise the gate properly. One gate damaged.
Sept. 4	7.53 a.m.	Main Street, Glencoe, Ont.	DS-253	Had car in gear while waiting for train to pass.
" 4	7.03 K.	Lickman Road, Mile 74·6, Yale Subd, B.C.	61-374	Attempted to cross track in front of moving train. Driver knew train was coming as he mentioned same to his companion, who had got out of the auto to open and close gate leading from farm onto highway.
" 5	4.18 p.m.	Ville St. Pierre, Que.	H-17066	Disregarded signal given by crossing bell and wigwag,, passing over tracks directly in front of approaching engine.
" 8	9.57 a.m.	Scugog Street, Bowmanville, Ont.	1-759	Motorcycle stopped for south gate which was down for No. 20, then pushed under gate and crossed track ahead of train.
" 9	21.45 K.	East Crossing, Flaxcombe, Sask.	62761	Ran into side of train, striking 14th car from caboose; auto dragged seven poles.
" 9	18 K.	Highway Crossing just east of St. Elmo Station, B.C.	60-777	Crossed over track dangerously close to engine; whistle sounded; bell ringing for crossing.
" 11	3.45 p.m.	Kingston Road, Cobourg, Ont.	43764	Ran into east gate damaging same.
" 16	3.25 p.m.	Public Crossing MP 2·2 Camrose Subd., Alta.	AT-9392	Truck driver did not observe approaching train.
" 18	20 K.	No. 5 Highway, Roblin Station, Man.	T. 6-632	Auto not under control approaching crossing. Ran into side of train.
" 20	12.50 p.m.	Public Crossing MP 54·8 Wabamun Subd., Alta.	51935	Driver of car states brakes failed to hold on his car.
" 25	4.45 p.m.	Public Crossing MP 112·1 Unity Subd., Alta.	41143	Auto stalled on crossing. No one injured.
" 29	11.30 P.M.	Lindsay St., Drummondville, Que.	96894	Driver of auto unable to stop in time.

CANADIAN PACIFIC RAILWAY (Western Lines)

Date and District	Time	Crossing	Licence No. of Auto	Remarks
SASKATCHEWAN DISTRICT—				
Jan. 11, 1933..	14 K.....	Broadway, Yorkton..	2–200 1932.....	Crossed over track when stop signal up, just ahead of Eng. 928, which was backing on to train in passing track.
Feb. 11, 1933..	16.45 K.....	Broadway, Yorkton..	23–757 1932.....	Crossed over track when stop signal up while Eng. 794 backing over crossing.
Feb. 23, 1933..	13.35 K.....	Broadway, Yorkton..	2–358 1933.....	Crossed over track when stop signal up, about 25 ft. ahead of Eng. 928.
Mar. 24, 1933..	17.55 K.....	Broadway, Yorkton..	2–186 1932.....	Crossed over track when stop signal up when engine almost at crossing.
Mar. 27, 1933..	19.45 K.....	Broadway, Yorkton..	3–343 1933.....	Crossed over track when stop signal up when No. 52 almost at crossing.
May 7, 1933..	18·55 K.....	Broadway, Yorkton..	39–556.....	Crossed over track when stop signal up just ahead of engine.
May 18, 1933..	15.25 K.....	Broadway, Yorkton..	20363.....	" "
May 22, 1933..	13.47 K.....	Broadway, Yorkton..	24–199.....	" "
June 5, 1933..	17.22 K.....	Broadway, Yorkton..	.....	" "
June 22, 1933..	19.26 K.....	Broadway, Yorkton..	36–160.....	Came up to crossing at high speed and when saw stop signal put on brakes but could not stop before on tracks, was able to back up before No. 51 which was going slow reached crossing.
ALBERTA DISTRICT				
Jan. 9, 1933..	22.30 K.....	2nd St. Medicine Hat.	18–215.....	Car ran into gates breaking same.
Jan. 17, 1933..	13.20 K.....	4th St. W., Calgary...	20–703.....	Ran into crossing gates breaking same.
Feb. 4, 1933..	20.00 K.....	4th St. W., Calgary...	474.....	Ran into southeast gate, breaking it.
Feb. 5, 1933..	17.45 K.....	2nd St. Medicine Hat.	18–118.....	Car ran into south gate, breaking same.
Mar. 3, 1933..	9.00 K.....	Allowance Ave., Medicine Hat.	D 8–930.....	Car ran into crossing gate, breaking same.
Mar. 17, 1933..	22·40 K.....	2nd St. Medicine Hat.	18–660.....	Car ran into north gate, breaking ing same.
June 22, 1933..	16.00 K.....	4th Street West, Calgary.	.....	Ran into crossing gates breaking north gate.
ESQUIMALT AND NANAIMO RAILWAY—				
Mar. 4, 1933..	Evening....	E. & N. Russell St...	10–904 B.C.....	East gate was run into and broken by automobile. Also stanchion damaged.

CANADIAN PACIFIC RAILWAY (Western Lines)—*Continued*

Division	Date	Location	Particulars
Kenora	Feb. 18	Mountain Avenue, Crossing. Westfort, Ont., Mileage 2·73 Kam. Subdivision.	H. A. Adams, Signal Maintainer, travelling on motor car, Westbound track, struck Chevrolet motor truck, Ontario licence 63-479-C, driven by T. Dika, which had stalled on crossing. Slight damage to fender of truck and front upright of frame on motor car slightly bent.
Portage	Jan. 9	Mileage 78·2, Carberry Subdivision.	Train No. 54, engine 2523, struck sleigh, owned by G. A. Tait, Macgregor, which had stalled on crossing. Team had stalled on crossing. Team had been unhitched from sleigh. Damage to sleigh, $15.
	Jan. 16	Mileage 14·6, Winnipeg Beach Subdivision.	Train Extra South, engine 3034, struck sleigh, which was loaded with wood and owned by W. Paul. Sleigh stalled on crossing. Team unhitched before struck. Sleigh considerably damaged. Damage to engine 3034, $25.
	Jan. 23	Notre Dame Avenue, Mileage 0·9, Glenboro Subdivision.	Nash coupe Manitoba licence 12040, driven by J. S. Carter, endeavoured to cross ahead of train No. 119, engine 3032 and was struck. Damage to auto; left side door broken, glass, fenders and running board. Rear tire torn off.
	June 22	Riverton yard, mileage 81·86 Winnipeg Beach Subdivision.	Star coupe, Manitoba licence 18858, driven by T. Dodds, which was standing on west side of crossing, moved on to crossing in front of engine 2531, which was switching in Riverton Yard. Runing board, fenders and one wheel on driver's side of auto was damaged.
Brandon	June 5	Mileage 117, Broadview Subdivision.	Ford auto, Sask. licence 28–158, driven by A. J. McCormack, ran into caboose on train, Ex. West 5127, when passing over crossing. Damage to caboose No. 436972, $10. Front of auto damaged.
Saskatoon Division.	May 10	M. 112·6 Sutherland Sub. & 3rd Ave., Saskatoon. Train No. 52.	Engineer saw truck approaching crossing, and when it was seen driver was not stopping, emergency application of brake was made. Auto struck by train, resulting in damage to auto. Driver of auto gave explanation for not stopping that he thought our train was a C.N.R. train on their own track and did not discover his error till too late to stop.
Alberta District—			
Lethbridge	Mar. 8	Mi. 25·6 Macleod Subd	Train 538 struck truck bearing Alberta licence 2/530.
	" 26	Mi. 86·6 Crowsnest Subd	Pontiac Sedan Alberta Licence No. 559 ran into side of train Extra West 3748.
Calgary	Feb. 17	Anthracite Laggan Subd	Train No. 2 struck Cord Sedan Alberta licence 8–832.
Edmonton	Feb. 7	105th St., South Edmonton.	Runaway team owned by City Dairy attempted to cross track ahead of Train No. 51.
Vancouver	Jan. 6	Vancouver (Victoria Drive).	Work Extra 6810 struck auto truck B.C. 105–416.
	Jan. 20	Vancouver (Smythe St.)	Auto truck B.C. 72–334 attempted to cross tracks ahead of yard engine 6262 and was struck.
Kootenay	Jan. 14	Grand Forks—mile 95·3 Boundary Subdivision (Fourth St. Crossing).	Auto truck owned by O. C. Dunn, B.C. 30712, passed over track immediately in front of train No. 11 which was backing up over crossing at a speed of about six miles per hour with bell ringing. Truck slightly grazed.
Kettle Valley	June 6	Mile 8·8 Carmi Subdivision.	Train No. 78 struck truck B.C. 28–813 driven by J. Fernstrom, Kettle Valley, B.C., due to failure of truck driver to hear signals or see train. Damage to truck $10.

CANADIAN PACIFIC RAILWAY (Eastern Lines)

Date	Time	Crossing	Licence No. of Auto	Dangerous Practice
NEW BRUNSWICK DISTRICT				
Feb. 16	10.13 a.m.	Douglas Avenue, Saint John.	J-6721 NB	Car passed under gates as they were being lowered, bell ringing.
Mar. 19	7.45 p.m.	" "		A lady pushed up gates as train had passed.
April 7	3.05 p.m.	" "	J-2528 NB	Car dashed over crossing at very high rate of speed.
April 11	3.50 p.m.	" "	CJ-153 NB	Truck turned on crossing.
April 14	5.45 p.m.	" "	J-3116 NB	Auto turned on crossing.
May 1	5.05 p.m.	" "	J-4028 NB	Auto dashed under gates while being lowered.
May 6	2.25 p.m.	" "	CJ-805 NB	Truck passued under gates as they were being lowered. Bell ringing.
May 13	3.45 p.m.	" "	J-3992 NB	Auto ran under gates while being lowered.
June 6	3.20 p.m.	" "	CJ-709 NB	Truck dashed under gates while being lowered.
June 8	8.20 p.m.	" "	Unknown	Auto ran under gates while being lowered.
June 23	8.20 p.m.	" "		Crowd of boys held gates down after train passed.
July 4	4.55 p.m.	" "	J-3840 NB	Auto turned on crossing.
July 5	6.25 p.m.	" "		Young man pushed up gates after engine had passed.
July 12	2.45 p.m.	" "	J-3546 NB	Auto dashed under gates while being lowered.
July 17	11.10 a.m.	" "	J-2376 NB	Auto dashed under gates while being lowered.
QUEBEC DISTRICT				
Feb. 13		Gouin Blvd., Bordeaux.	Que. F-16594	Truck hauling ice slid into gates breaking southeast gate.
April 22		Bridge St., Quebec	Que. T-4142	Gates had been lowered when auto struck and broke south side gate.
Feb. 20		Dorval Ave., Dorval.	Que. F-2582	Truck ran into and broke North gate and stand on C.N. crossing.
April 16		Lake Shore Rd., Vaudreuil.	Que. 51797	Auto struck South gate arm breaking same, also casting on barrier arm.
May 16		St. Valier Street, Quebec.		All gates had been lowered for incoming C.N.R. No. 46 when closed auto, coming from south and travelling at vey high rate of speed, broke both tail ends of northwest and northeast gates. Unable to secure number as auto did not stop.
June 30		Dorchester Street, Quebec.		Quebec City Fire Department ladder truck, from No. 3 station, proceeding to fire in Limoilou, struck and damaged south gate. Accident happened during heavy rain storm.
July 25		Westminster Avenue, Montreal West.		While gates were being lowered to permit track motor car to pass over crossing, horse drawn vehicle, owned by Dent Harrison's Bakery, ran into and broke gate.
ONTARIO DISTRICT				
Feb. 7	5.05 p.m.	Centre St., Chatham.	Ont. C-58106	Truck failed to hear crossing bell or see gates being lowered and ran into gate arm breaking it.
Feb. 15	7.45 p.m.	Waterloo St., London.	Ont. T-8885	Auto skidded on icy pavement into gate arm breaking it.
Feb. 20		Raglan St., Renfrew.	Ont. KO-222	Auto ran into gates when same were being lowered. Bell ringing at time.

CANADIAN PACIFIC RAILWAY (Eastern Lines)—*Concluded*

Date	Time	Crossing	Licence No. of Auto	Dangerous Practices
ONTARIO DISTRICT *Concluded*				
Mar. 16	8.00 p.m.	Eramosa Rd., Guelph	Ont. H.P.-264	Gate arms had been lowered and crossing bell ringing but auto broke through north gate arm and ran into side of train.
Mar. 24	9.25 a.m.	Tecumseh Rd., Windsor.	Ont. 57725-C	Yard engine struck truck—wigwag signals and crossing bell working.
Mar. 25	3.15 p.m.	Richmond St., London	Ont. U-7210	Auto skidded on pavement and knocked down advance railway crossing sign post.
April 12	3.28 p.m.	Adelaide St., London.	Ont. V-4559	Auto passed watchman's stop sign while yard engine backing coaches over crossing.
April 24	1.58 p.m.	Prince Edward St., Brighton.	Ont. 25857	Auto drove over crossing in front of train while wigwag working.
ALGOMA DISTRICT				
June 26	5.25 p.m.	Elm Street Crossing, Sudbury.	AY-642 Ontario.	Gates had been lowered when auto truck struck and broke northeast gate.

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The Board of

Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

Vol. XXIII Ottawa, November 1, 1933 No. 17

This publication is issued fortnightly, on the 1st and 15th of each month. Annual subscription, $3.00; single numbers, 20 cents; in quantities, 25 per cent discount. Remittances should be made to the King's Printer, Ottawa, by postal money order, express order or accepted cheque. The use of currency for this purpose is contrary to the advice of the postal authorities and entails a measure of risk. Postage stamps, foreign money or uncertified cheques will not be accepted. No extra charge is made for postage on documents forwarded to points in Canada and in the United States, but cost of postage is added to the selling price when documents are mailed to other countries. Early application should be made for copies in quantities. Subscriptions should be sent, in every case, to the King's Printer, Ottawa.

ORDER No. 50397

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act; and the Order of the Board No. 47490, dated October, 6, 1931, approving tolls published in Tariff C.R.C. No. 864 filed by the Dominion Atlantic Railway Company.

File No. 34822.13

WEDNESDAY, the 4th day of October, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Asst. Chief Commissioner.*

Upon its appearing that certain normal tolls certified in the said Order No. 47490 are not in accordance with the agreed basis for the purpose of reimbursement,—

It is ordered: That the said Order No. 47490, dated October 6, 1931, be, and it is hereby, amended as follows:—

(1) By striking out the figures " 21 " under item No. 10, from Port Williams, Nova Scotia, to Truro, Nova Scotia, on page 2, and substituting therefor the figures " 20½ ".

(2) By striking out the figures " 25 " under item 55, from Halifax, Nova Scotia, to Yarmouth, Nova Scotia, on page 3, and substituting therefor the figures " 24 ".

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 50404

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.12

THURSDAY, the 5th day of October, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Asst. Chief Commissioner.*

The Board orders:

1. That the tolls published to Sarnia, Thorold, and Welland, Ontario, in item 1222A, and to Chatham, Ontario, in item 1370C, of Supplement No. 26 to

Tariff C.R.C. No. E-4632, filed by the Canadian Pacific Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said items 1370C and 1222A of Supplement No. 26 to Tariff C.R.C. No. E-4632, approved herein, are as follows, namely:—

Item 1222A To	Rates in cents per 100 pounds
Sarnia, Ont.	41½
Thorold, Ont.	34½
Welland, Ont.	34½
Item 1370C To	
Chatham, Ont.	42

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 50405

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13

THURSDAY, the 5th day of October, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Asst. Chief Commissioner.*

The Board orders:

1. That the tolls published from South Maitland, Nova Scotia, in items 70C and 100B, also the tolls published in item 157, of Supplement No. 65 to Tariff C.R.C. No. 817, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said items 70C, 100B, and 157 of Supplement No. 65 to Tariff C.R.C. No. 817, approved herein, are as follows, namely:—

	Rates in cents per 100 pounds
Item 70C	9½
Item 100B	5
Item 157	4½

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 50406

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13

THURSDAY, the 5th day of October, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Asst. Chief Commissioner.*

The Board orders:

1. That the tolls published to Bear River, Nova Scotia, and Digby, Nova Scotia, in item 111A of Supplement No. 60 to Tariff C.R.C. No. 856, filed by the

Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said item 111A of Supplement No. 60 to Tariff C.R.C. No. 856, approved herein, are as follows, namely:—

To	Rates in cents per 100 pounds Anthracite	Bituminous
Bear River, N.S.	9	7¾
Digby, N.S.	9	8¼

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 50407

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13

THURSDAY, the 5th day of October, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Asst. Chief Commissioner.*

The Board orders:

1. That the tolls published from Kingston, Nova Scotia, in item 76A of Supplement No. 61 to Tariff C.R.C. No. 856, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said item 76A of Supplement No. 61 to Tariff C.R.C. No. 856, approved herein, are as follows, namely:—

From	Rates in cents per 100 pounds Less than carloads	Carloads
Kingston, N.S.	37½	25

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 50408

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13

THURSDAY, the 5th day of October, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Asst. Chief Commissioner.*

The Board orders:

1. That the tolls published in item 64 of Supplement No. 62 to Tariff C.R.C. No. 856, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said item 64 of supplement No. 62 to Tariff C.R.C. No. 856, approved herein, is 12½ cents per 100 pounds.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 50409

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13

THURSDAY, the 5th day of October, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Asst. Chief Commissioner.*

The Board orders:

1. That the tolls published in Tariff C.R.C. No. 894, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said Tariff C.R.C. No. 894, approved herein, are as follows, namely:—

From	Rates in cents per barrel
Weston, N.S.	37½
Kingsport, N.S.	
Berwick, N.S.	
Kentville, N.S.	32½
Port Williams, N.S.	31½
Horton Landing, N.S.	29
Hantsport, N.S.	27½
Hartville, N.S.	25

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 50410

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13

THURSDAY, the 5th day of October, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Asst. Chief Commissioner.*

The Board orders:

1. That the toll published in Tariff C.R.C. No. 895, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said Tariff C.R.C. No. 895, approved herein, is 99 cents per 100 pounds; 1½ cents per 100 pounds to be deducted account of water movement.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 50411

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.14

THURSDAY, the 5th day of October, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Asst. Chief Commissioner.*

The Board orders:

1. That the tolls published in Tariffs C.R.C. No. 706 and No. 707, filed by the Temiscouata Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said Tariffs C.R.C. No. 706 and No. 707, approved herein, are as follows:—

Distances	Rates in cents per 100 pounds
5 miles	2½
25 miles	4
40 miles	4½
50 miles	5
85 miles	5½

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 50412

In the matter of the application of the Detroit and Windsor Subway Company and the Detroit and Canada Tunnel Company, hereinafter called the "Applicant Companies," for approval of Tariff C.R.C. No. 17, covering tolls to be charged in respect of the Detroit Tunnel, on file with the Board under file No. 35943.5.

FRIDAY, the 6th day of October, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Asst. Chief Commissioner.*

Upon the report and recommendation of the Assistant Chief Traffic Officer of the Board,—

It is ordered: That the applicant companies' said Tariff C.R.C. No. 17, covering tolls to be charged in respect of the Detroit Tunnel, on file with the Board under file No. 35943.5, be, and it is hereby, approved.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 50419

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.2

THURSDAY, the 12th day of October, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

The Board orders: That the tolls published in the following tariffs, filed by the Canadian National Railways under section 3 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of the said section 3, namely:—

Supplement No. 61 to Tariff C.R.C. No. E-1240.
Supplement No. 5 to Tariff C.R.C. No. E-1308.
Supplement No. 22 to Tariff C.R.C. No. E-1804.
Supplement No. 6 to Tariff C.R.C. No. E-1911.
Tariff C.R.C. No. E-2060.
Tariff C.R.C. No. E-2061.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 50437

In the matter of the application of the Canadian Pacific Railway Company, hereinafter called the "Applicant Company," for permission to cancel on less than statutory notice the rates to Teeswater, Ontario, including collection and delivery service, now published in Tariff C.R.C. No. E-4662.

File No. 27612.82

MONDAY, the 23rd day of October, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

Upon its appearing that the applicant company is unable to arrange collection and delivery service at Teeswater, Ontario, in connection with rates now published in the said Tariff C.R.C. No. E-4662; and upon the report and recommendation of the Assistant Chief Traffic Officer of the Board,—

It is ordered: That the applicant company be, and it is hereby, permitted to cancel, upon three days' notice, the rates, including collection and delivery service, at Teeswater, Ontario.

C. P. FULLERTON,
Chief Commissioner.

GENERAL ORDER No. 518

In the matter of the General Order of the Board No. 512, dated April 4, 1933, made upon the application of Shipping Containers, Limited, of Montreal, Quebec, granting leave to use, for shipping over railways in Canada, certain shipping containers prescribed in Interstate Commerce Commission regulations for the transportation of explosives and other dangerous articles by freight, as published in Agent B. W. Dunn's Tariff C.R.C. No. 2, on file with the Board under file No. 1717.35.

TUESDAY, the 10th day of October, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*
Hon. T. C. NORRIS, *Commissioner.*
J. A. STONEMAN, *Commissioner.*

Upon reading the application of the Hinde & Dauch Paper Co. of Canada, Limited, for an order amending the said General Order No. 512 so as to provide for the use of strawboard as corrugated material in the boxes described in the order, the Railway Association of Canada and the Bureau of Explosives consenting; and upon the report and recommendation of the Chief Traffic Officer of the Board,—

It is ordered: That the said General Order No. 512, dated April 4, 1933, be, and it is hereby, amended by striking out clause (*b*) of paragraph 2 thereof and substituting the following, namely:—

"(*b*) Board must be: 350-pound test board, double-faced B-flute type with at least 50 corrugations per foot; facings at least 0·020 of an inch thick; corrugated sheet made of strawboard or sulphate fibreboard at least 0·009 of an inch in thickness."

C. P. FULLERTON,
Chief Commissioner.

GENERAL ORDER No. 519

In the matter of the General Order of the Board No. 468, dated March 12, 1929, prescribing specifications for highway crossing signals.

File No. 15382

TUESDAY, the 10th day of October, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

Upon the consideration of proposed standard method of painting highway crossing signals of the wigwag type, and reading the submissions filed on behalf of the Canadian Pacific, Canadian National, Toronto, Hamilton and Buffalo, Great Northern, and Pere Marquette Railway Companies, and the Michigan Central and the New York Central Railroad Companies; and upon the report and recommendation of the Division Engineer of the Board, concurred in by its Chief Engineer,—

It is ordered: That the said General Order No. 468, dated March 12, 1929, be, and it is hereby, amended by adding at the end of paragraph 1 thereof the following, namely:—

"Masts and foundations supporting bells and wigwags, automatic electric bells, danger signs, and flashing lights shall be painted with black and white stripes, as indicated on blue print dated 10th June, 1933."

C. P. FULLERTON,
Chief Commissioner.

GENERAL ORDER No. 520

In the matter of the General Train and Interlocking Rules approved by General Order No. 42, dated July 12, 1909; and General Order No. 256, dated November 20, 1918, rescinding paragraphs 1 and 2 of Rule 102 of the said General Train and Interlocking Rules and substituting new paragraphs therefor.

Files Nos. 25434 and 4135.36

TUESDAY, the 10th day of October, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*
G. A. STONE, *Commissioner.*

Upon the application of the Railway Association of Canada for an order modifying the said General Order No. 256; and upon the report and recommendation of the Chief Operating Officer of the Board,—

It is ordered: That paragraph 1 of rule 102 of the said General Train and Interlocking Rules, as amended by General Order No 256, dated November 20, 1918; and paragraph 1 of rule 103 of the Operating Rules of the Canadian National Railways, approved by Order No. 42252, dated February 27, 1929, be struck out and the following substituted therefor, namely:—

"When cars are pushed by an engine (except when shifting and making up trains in yards, where there are no public highway crossings at rail level, or where there are public highway crossings at rail level adequately protected by gates or otherwise), a flagman must take a conspicuous position on the leading car."

C. P. FULLERTON,
Chief Commissioner.

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The Board of

Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

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ORDER No. 50482

In the matter of the application of the Canadian National Railways, hereinafter called the "Applicants," for permission to cancel, on less than statutory notice, a rate of 9 cents per 100 pounds published in item 508 of Supplement No. 39 to Tariff C.R.C. No. E-1979.

File No. 27612.83.

WEDNESDAY, the 1st day of November, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Asst. Chief Commissioner.*

Upon its appearing that the said rate was published to meet truck competition, and that, owing to reduction in the truck rate, the applicant company was unable to secure the business—

It is Ordered: That the applicants be, and they are hereby, permitted to cancel, upon three days' notice, the rate of 9 cents per 100 pounds now published on granite, marble, and stone from Sherbrooke to Granby, Quebec, in item 508 of Supplement No. 39 to Tariff C.R.C. No. E-1979.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 50487

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.2

THURSDAY, the 2nd day of November, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

The Board orders: That the tolls published in the following tariffs filed by the Canadian National Railways under section 3 of the Maritime Freight Rates

Act be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3, namely:—

Supplement No. 39 to Tariff C.R.C. No. E-1234.
Supplement No. 73 to Tariff C.R.C. No. E-1235.
Supplement No. 62 to Tariff C.R.C. No. E-1240.
Supplement No. 63 to Tariff C.R.C. No. E-1240.
Supplement No. 6 to Tariff C.R.C. No. E-1245.
Supplement No. 7 to Tariff C.R.C. No. E-1245.
Supplement No. 11 to Tariff C.R.C. No. E-1737.
Supplement No. 23 to Tariff C.R.C. No. E-1804.
Supplement No. 24 to Tariff C.R.C. No. E-1804.
Supplement No. 12 to Tariff C.R.C. No. E-1829.
Supplement No. 7 to Tariff C.R.C. No. E-1911.
Supplement No. 4 to Tariff C.R.C. No. E-1974.
Tariff C. R. C. No. E-2066.

C. P. FULLERTON,
Chief Commissioner.

GENERAL ORDER No. 521

In the matter of the General Order of the Board No. 468, dated 12th March, 1929, prescribing specifications for highway crossing signals.

File No. 15382

THURSDAY, the 2nd day of November, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*

S. J. MCLEAN, *Asst. Chief Commissioner.*

Upon the consideration of proposed standard method of painting highway crossing signals of the wigwag type, and reading the submissions filed on behalf of the Canadian Pacific, Canadian National, Toronto, Hamilton & Buffalo, Great Northern and Pere Marquette Railway Companies and the Michigan Central and the New York Central Railroad Companies; and upon the report and recommendation of the Division Engineer of the Board, concurred in by its Chief Engineer—

It is Ordered:

1. That the said General Order No. 468, dated 12th March, 1929, be, and it is hereby, amended by adding at the end of paragraph 1 thereof the following, namely:

"Masts and foundations supporting bells and wigwags, automatic electric bells and danger signs, and flashing lights shall be painted with black and white stripes, as indicated on blue print dated 10th June, 1933."

2. That General Order No. 519, dated October 10, 1933, made herein, be rescinded.

C. P. FULLERTON,
Chief Commissioner,
Board of Railway Commissioners for Canada.

ACCIDENTS REPORTED TO THE OPERATING DEPARTMENT, BOARD OF RAILWAY COMMISSIONERS, FOR MONTH OF AUGUST, 1933

Railway accidents	172,	with 20 killed	and 171 injured
Railway accidents at highway crossings	23,	with 13 killed	and 34 injured
	195	33	205

	Killed	Injured
Passengers	..	36
Employees	2	105
Others	31	64
	33	205

DETAILS OF ACCIDENTS AT HIGHWAY CROSSINGS

Prince Edward Island

No. of Accidents

1 Automobile—Auto driver failed to observe train, due to cars standing close to crossing in siding. Ontario licence K-228.

New Brunswick

1 Automobile—Ran into side of train. Licence N.B. J-5702.
1 Automobile—Auto driver failed to take necessary precautions. Licence N.S. 60-752.

Quebec

2 Automobiles—Auto driver failed to stop for crossing. Licences, Que. H-8534; 15979.
1 Automobile—Auto driver tried to beat train. Licence Que. 111607.

Ontario

5 Automobiles—Ran into side of train. Ont. licences, HD-57; S-8574; MK-162; EL-833; Que. licence 99837.
3 Automobiles—Auto driver failed to see or hear train. Ont. licences, Y-950; H-7381; HS-760.
1 Automobile—Auto driver failed to observe train. Ont. licence ME-878.
1 Automobile—Auto driver drove past crossing watchman. Ont. licence C-7146.
1 Automobile—Auto driver attempted to beat train. Ont. licence K-4707.
1 Auto truck—Truck driver attempted to beat train. Ont. licence 49814-C.
1 Horse-drawn vehicle—Wagon driver attempted to beat train.

Manitoba

1 Auto truck—Truck driver failed to look for train. Licence Man. T-3-083.
1 Horse—Boy unable to manage horse.
1 Pedestrian—Failed to observe approaching train.

Saskatchewan

1 Pedestrian—

Of the 23 accidents at highway crossings, 19 occurred at unprotected crossings and 4 at protected crossings. Nineteen of the accidents occurred during daylight hours and 4 at night.

Ottawa, October 23, 1933.

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The Board of Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

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Complaint and Application of the Canada Wood Products Company, St. Thomas, Ont., re *freight rates on lumber consisting of short boards or "trimmer ends."*

File No. 38215

JUDGMENT

McLEAN, ASSISTANT CHIEF COMMISSIONER:

The tariffs publishing rates on lumber and forest products, carloads, contain a scale of rates applying on lumber and other forest products listed therein as taking the lumber rates. They also contain other and lower scales of rates, for example, one applying on bolts and logs for manufacturing purposes, another on cordwood for fuel purposes only, and another on edgings, slabs and mill refuse for fuel purposes only.

Complainant alleges that the character of the material, the rates on which are here in issue, is such as to entitle it to the application of the same basis of rates as authorized on slabs, edgings and mill refuse for fuel purposes. It is being charged the lumber rate which, under the present tariff provisions, is the proper basis.

Complainant sets out that, in the manufacture of lumber, the first process is the removal of the outside of the log, these outside pieces being called slabs; next, the removal of the wane, or outside portion, from the edges of the board, known as edgings; and lastly, the reduction of the boards to standard lengths, from which operation are obtained these short end pieces of irregular length and shape. These waste materials from these several operations are carried from various points in the mill in refuse conveyors and such material as is suitable for the manufacture of lath and pickets is separated therefrom. In the event that there is a market afforded by the basket and box factories, there is then picked from the remaining pile certain material consisting mostly of end pieces of irregular shape, which explains the term "trimmer ends" sometimes employed in designating this stock, these being utilized by such factories to produce shooks.

Complainant contends "that the facts fail to establish that any substantial difference exists between mill refuse for fuel purposes and mill refuse such as used for producing shooks, either in point of value or other transportation characteristics, on which to predicate a difference in rates and sustain the action of the carriers." With respect to the material used by complainant, it is stated it is purchased for approximately $60 per car f.o.b. at the mill. It is evident

that there are different grades of this material as shipped from the mills due to the selection of the stock shipped, as another name for this material is "short shorts," the mill price of which is given as being very considerably greater than the figure named by complainant. The record does not give the mill price of this material when sold for fuel purposes only, so that all the facts are not a matter of record. The situation appears to be that this material, without any sorting, is sold as mill refuse for fuel purposes; that received by complainant is sorted and selected to a certain extent, and, in other cases, a still greater selection is made, which sells for a considerably higher price.

The suggestion was made by the complainant that if the carriers were apprehensive that difficulty would be experienced in determining the character of the material to which this application, if granted, would apply, the tariffs could make provision limiting the lower rates to end pieces not exceeding four feet in length. The carriers pointed out that certain classes of boards and a number of other articles now taking lumber rates would come within such a description; further, that the box manufacturers purchase a great deal of lumber in longer lengths as well as these short pieces and stated:—

> "How long do you suppose we would ship boards over four feet to the box factories? The difference in the rate would justify them in cutting them into lengths for boxes four feet in length and you can readily see how we would experience difficulty in that direction."

As an alternative, if the present basis of rates on mill refuse for fuel purposes only is deemed abnormally low for general application, complainant suggested that the rates on this material used by basket and box manufacturers "should not exceed those existing prior to 1918 plus the subsequent increases permitted on forest products generally." Just what is here meant is not clear, because an examination of the tariffs of the Canadian Pacific and Grand Trunk Railways as in effect over twenty years ago shows the provisions thereof to be the same as they are to-day, namely, that mill refuse rates were restricted to apply on such material when for fuel purposes only, and there was no provision, except the lumber rates, on this material when used for other than fuel purposes.

A representative of Firstbrook Boxes, Limited, who appeared at the hearing, stated they had asked the carriers for rates on this material based on 75 per cent of the lumber rate. These rates would be higher than applied for by complainant.

With respect to the material here in question, the carriers state there is a considerable quantity of this class of lumber moving between points in Ontario and Quebec for manufacture into box shooks, basket bottoms and boxes, on which the lumber rate is charged, and that if they established the rates applied for they would, undoubtedly, be flooded with applications for reductions in rates on lower classes of lumber between all points. They point out that there is only the one rate applying on lumber (exclusive of designated imported and valuable woods) and other articles listed as taking lumber rates; that they do not segregate lumber according to value in establishing the rates thereon, although, of course, there is a very wide range in values; that to reduce the current rates on lumber of low value would mean a serious loss of revenue to the railways which they cannot afford to sacrifice, consequently, if they attempted to make a realignment of lumber rates according to value they would require higher rates on the more valuable lumber as well as lower rates on the cheap lumber.

There is no doubt as to the position taken by the Board concerning the application, on lumber consisting of short pieces or so-called "trimmer ends" or "short shorts," of the rates published on mill refuse for fuel purposes only. The rates on the latter were before the Board only recently with respect to a matter of tariff interpretation and the Board stated:—

> "As bearing on the clear intention that rates on these commodities apply only when for fuel purposes, it is noted that in Order in Council

P.C. No. 1863, dated July 27, 1918, the increase allowed was one cent per 100 pounds, on 'Cordwood, Slabs and Mill Refuse, for fuel purposes.' Then, in the judgment covered by General Order No. 308, for the September, 1920, increase in rates, it is stated: 'The increase in the rates on Cordwood, Slabs, Edgings and Mill Refuse, all for use exclusively as fuel, should be limited to 10 per cent.' In General Order No. 351, dated November 26, 1921, covering the decrease in rates effective December 1, 1921, it is provided that 'Rates on Cordwood, Slabs, Edgings and Mill Refuse for fuel purposes, be restored to the basis in effect prior to September 13, 1920.'" Volume 23, Board's Judgments, Orders, Regulations and Rulings, page 242.

The view of complainant that there should be a lower rate on this low valued material than on more valuable lumber can be fully appreciated. At the same time it seems fair to assume that it is because of an advantage in doing so that complainant purchases this material at a very low price instead of lumber at a very much higher price for use in making basket bottoms. At the hearing, in answer to a question by Commissioner Stoneman, complainant stated he purchased this material because it is economical.

The issue here raised is one, as we view it, that would open up a very large question, namely, the matter of a realignment of the rates on lumber and other articles listed as taking lumber rates, segregating them into different classes according to value and other characteristics, and prescribing different scales of rates thereon. There has never been anything but a common rate applying on all of these articles, regardless of value or whether rough, planed, dressed, etc. So far as the Board is aware, there has never been any application or demand from the lumber manufacturers for any such rate adjustment and we believe it to be very doubtful if anything along such lines could be worked out that would be satisfactory to all interests. Such a refinement of rate-making has not been attempted in the United States, although in 1919 the Interstate Commerce Commission concluded a very extensive investigation for the purpose of "determining upon a reasonable and non-discriminatory rate relationship between the various kinds of lumber and lumber products," 52 I.C.C., 598. They stated "all parties to this proceeding, the carriers included, are agreed that no differentiation in rates should be made between rough and dressed lumber, or between different grades of lumber, but that all of the ordinary products of saw and planing mills should take lumber rates." They prescribed a long list of articles which should take lumber rates, including the material which is here being considered. Some conception of the variation in values of different forms of lumber is given in Appendix 2 to the Commission's report showing a range of average carload values from $2.32 to $83.93 per ton.

On the meagre record here, which originates, not as an application from any lumber shipper, but the complaint of one purchaser of this material, the Board would not be justified in entering upon an investigation of the character referred to. It should be done only upon a general application from the lumber trade and would require an extensive inquiry at which all interests would be represented and the matter developed fully from all angles.

The complaint will be dismissed and the application refused.

S. J. McLEAN.

Ottawa, Ont., October 24, 1933.

Concurred in by Commisisoners Norris and Stoneman.

ORDER No. 50510

In the matter of the complaint and application of the Canada Wood Products Company, of St. Thomas, Ontario, regarding freight rates on lumber consisting of short boards or "trimmer ends."

File No. 38215

THURSDAY, the 9th day of November, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Asst. Chief Commissioner.*
Hon. T. C. NORRIS, *Commissioner.*
J. A. STONEMAN, *Commissioner.*

Upon hearing the matter at the sittings of the Board held in St. Thomas, October 11, 1933, the Canada Wood Products Company, Firstbrook Boxes Limited, the Canadian Manufacturers' Association, Canadian Freight Association, Canadian National Railways, Canadian Pacific Railway Company, and the Pere Marquette Railway Company being represented at the hearing, and what was alleged,—

It is ordered: That the complaint be, and it is hereby, dismissed and the application refused.

C. P. FULLERTON,
Chief Commissioner.

Application of Planters Nut and Chocolate Company, Limited, Toronto, Ontario, for an order directing a reduction in the ratings of second class L.C.L. and fourth class C.L., provided on salted peanuts in other than glass containers in Canadian Freight Classification No. 18, to third class L.C.L. and fifth class C.L.

File No. 33365.96

JUDGMENT

BY THE BOARD:

The applicant and the Canadian Freight Association (on behalf of the railways) filed written submissions setting out their contentions with respect to this application and stated the matter could be considered and disposed of by the Board upon such submissions and without a public hearing.

Salted peanuts, in other than glass containers, are at present provided for in Canadian Freight Classification No. 18 at ratings of second class L.C.L. and fourth class C.L.; ratings of third class L.C.L. and fifth class C.L. are applied for. Applicant alleges that the present ratings on salted peanuts are unreasonable on the following grounds:—

(1) Decrease in value of the product.

(2) Salted peanuts are rated the same as confectionery and high-grade nuts having a much higher value and the placing of salted peanuts in the same class for the purpose of classification is an injustice; that a classification rating which fails to reflect the materially lower wholesale and retail prices of salted peanuts in relation to confectionery and high-grade nuts is unreasonable.

DECREASE IN VALUE OF THE PRODUCT

Applicant states that since 1925, factors usually deemed to have a controlling effect upon the question of classification have undergone material change; that the present average wholesale value of salted peanuts, packaged and bulk goods, is 15 cents per pound, while the average wholesale value in 1932 was

26·99 cents per pound, showing that the value of the product has decreased 44·42 per cent; that, inasmuch as value is one of the elements considered in determining classification ratings, the decrease in price is justification for a reduction in the present ratings.

According to a statement furnished by applicant, the wholesale price range in 1932 was from 21¼ cents per pound for whole blanched salted peanuts shipped in bulk in pails to 34 cents per pound for the same peanuts retailed in 5-cent packages; there is not given the volume shipped in each price range so as to show the actual average price per pound of all the salted peanuts shipped in that year. The same remarks apply to the average figure given for this year.

We have only been furnished with prices of salted peanuts for two years, in which there has been a marked difference in price, the reasons for which are not explained. Applicant considered it unnecessary to make any explanation for reducing its prices other than that it was done "in order to maintain our position." What that means we do not know. The present classification ratings on these nuts shipped in barrels or boxes as outside containers have been in effect for forty-nine years and we think it can be reasonably assumed that there has been considerable price fluctuation during this period, although it is not a matter of record. Applicant states, with regard to values, that "in the case of salted peanuts there is no fluctuation, but there has been a general, and to all appearances a permanent, reduction." The record is entirely devoid of any evidence in support of this statement and no proof furnished that the prices do not fluctuate.

With respect to the reduction in present prices of salted peanuts as compared with 1925, to which applicant directs attention, the railways point out that in the intervening period reductions and fluctuation of varying amount have been made in the prices of practically all the thousands of articles enumerated in the Canadian Freight Classification. They refer to judgments of the Board in which it has been stated that rates and ratings cannot be changed to meet fluctuations in the prices of commodities; that this has never been accepted by any rate tribunal as a proper principle of rate-making; would result in no stability or permanency in rate structure; nor, necessarily, have any relation to the cost of service or other factors that are controlling. They give statistics published by the Department of Trade and Commerce showing 1933 prices on many products being from approximately 45 to 70 per cent of the 1926 prices. The classification ratings on such articles have not been changed because of the decrease in value. An examination of the reported decisions of the Interstate Commerce Commission shows there has been no reduction directed in the classification ratings in the Official, Western and Southern Classifications in the United States, based on the ground here advanced by applicant.

While there may be a decrease in the value of articles taking a rating of second class, reductions have also taken place in the value of articles rated third and first class, consequently, the fact of a price reduction on an article rated second class in itself affords no justification for reducing the rating thereon solely on that ground, nor does it furnish any proof that such rating is unreasonable in relation to the unchanged ratings on other articles similarly reduced in price. There would be no logic, consistency, reasonableness, nor justice in picking out only one product on which prices have been reduced and reducing the classification ratings thereon solely because of a decrease in its value.

Applicant markets a large volume of salted peanuts in packages, which retail at 5 and 10 cents each, and points out that the price reduction has been brought about by increasing the weight placed in these packages rather than a change in the retail price of the package. For example, one 5 cent package formerly weighing 1½ ounces now weighs 2⅝ ounces. Applicant states this results in the purchaser receiving twice the quantity of peanuts as formerly without any increase in price; the transportation companies receive approxi-

mately twice as much revenue as accrued to them formerly; both benefiting at the expense of the manufacturer, and this warrants some revision in the classification. What is meant by the purchaser and railways benefiting at the expense of the manufacturer is not clear. In another portion of its submission applicant states "this shows that any benefit which we may derive from increased business is being passed on to the consumer and the railway companies and not being kept in our pockets." So far as the carriers are concerned, if the charge on a given weight of peanuts is reasonable, a greater charge for an additional weight carried is likewise reasonable and they can receive twice as much revenue only when they perform the additional transportation service of carrying twice as much weight. If they receive a certain revenue for transporting one carload of peanuts, they can only receive twice as much revenue by transporting two carloads of peanuts.

RATINGS ON SALTED PEANUTS AS COMPARED WITH CONFECTIONERY AND OTHER NUTS

Applicant points out that salted peanuts are provided with the same ratings as confectionery and high-grade nuts having much higher value, and claims that placing salted peanuts in the same class for the purpose of classification is an injustice; that a classification rating which fails to reflect the materially lower wholesale and retail prices of salted peanuts in relation to confectionery and high-grade nuts is unreasonable; that the relationship of the rate in merchandising a relatively low-valued product such as salted peanuts, is infinitely more important than in the case of confectionery and nuts selling at prices approximately 100 per cent, or more, higher.

Applicant furnished statements showing wholesale prices of various confections averaging approximately 38 cents per pound and nuts averaging 69½ cents per pound. The confections included in these statements range from 34 to 46½ cents per pound.

With respect to the edible nuts other than peanuts, the railways stated that when the extensive revision of the classification was under consideration prior to 1925 (which is referred to at length in Volume 15, Board's Judgments, Orders and Rulings, page 177), they had proposed increasing the ratings on these nuts, but, during the negotiations with the special joint classification committee composed of representatives of both the manufacturers and the railways, objections were raised by shipppers, who claimed that in most cases such nuts were shipped in mixed carloads containing confectionery, chewing gum and peanuts. The effect of a higher rating on the nuts would be to exclude them from such mixed carloads at carload rating, or increasing the rating on the whole carload to the higher rating under the provisions of the classification rule relating to mixed carloads. They stated that they finally agreed to apply the one rating on all classes of edible nuts, continuing the ratings which had been in force since 1884. So far as relates to confectionery, the railways claimed applicant's figures only cover high-grade chocolates and were not representative of the average price of candy. They submitted a statement of wholesale prices ranging from 10 to 37 cents per pound. Applicant stated it was difficult to deny or confirm the prices shown by the railways, but, accepting them and striking a simple average, it showed an average value per pound of 17·62 cents, or 2·62 cents higher than the average value of 15 cents per pound on salted peanuts. They admitted that the low-priced candies shown by the railways were not taken into consideration by them, but alleged that the prices shown by the railways were far from being representative of the average price of confectionery. They added other items to the railways' figures and produced an average of 24·06 cents per pound and contended that this was a more representative average than that submitted by the railways.

Candy, confectionery and confections are made in many forms, are composed of numerous and varying ingredients, are differently packed, range in value from the penny goods to the high-priced chocolates and combinations of fruits and nuts with chocolates, vary in density, and comprise, under the generic term, many commodities. We consider it would be difficult to obtain data showing the entire range of prices and the volume shipped of each so as to determine the actual average price of all the confectionery handled. A mere arithmetical average of all price ranges without regard to the volume shipped in each is of little value in determining a representative average price. Such data is not before us, but we believe that the bulk of the candy and confectionery handled is in the low price range. It is noted that in a case before it concerning the classification ratings on candy and confectionery in Western Classification territory, the Interstate Commerce Commission referred to candies of values up to $1 per pound, but stated that at least 75 per cent of the candy and confectionery shipped to Western Classification territory, exclusive of the low price popped corn confectionery, was of a wholesale value of 15 cents or less per pound.

The railways also quoted retail prices per pound on cheese and certain meats provided with the same ratings as salted peanuts, which, while of a more perishable nature than peanuts, move in much greater volume and are of less value per pound retail than peanuts. They also gave retail prices of lard and rice (12½ cents and 8 cents per pound respectively) classifying third class L.C.L. and fifth class C.L. (the ratings here applied for by applicant), and sugar rated fourth class L.C.L. and fifth class C.L. at retail price of 7½ cents per pound, pointing out that the retail prices of these articles were lower than the wholesale price of peanuts, which retail from 20 cents to 30 cents per pound.

Applicant contended that the foregoing figures should not be admitted as evidence because there are certain features surrounding the handling of meats and lard which are not encountered in the case of salted peanuts, such as their perishable nature and refrigerator cars being required for their carriage; that sugar is carried at fourth class L.C.L., which is lower than applied for on salted peanuts (the carload rating on sugar, however, is the same as here applied for); that rice is carried in L.C.L. quantities at commodity rates based on fourth class (this is only true so far as Eastern Canadian territory is concerned and was established because of an import and international rate situation as set out in the Board's Judgment of November 1, 1910, and covered by Order No. 13852 of June 1, 1911).

The railways stated the value of salted peanuts compares favourably with the average value of other articles classified second class L.C.L. and fourth class C.L., and is much greater than the average value of articles classifying third class L.C.L. and fifth class C.L. Applicant stated it disagreed with this statement. It contends that in view of the values of certain commodities classifying second class L.C.L. and fourth class C.L., salted peanuts are entitled to lower ratings and named a few commodities classifying third class L.C.L. and fifth class C.L., which have a higher value than salted peanuts. The statements of both parties concerning values of articles in these respective classes are of a very general character and an interminable controversy could be centred around this point. Value, however, is only one of the many elements considered in the establishment of classification ratings. Dealing with value alone and taking only L.C.L. ratings for the purpose of comment, it may be stated that it is very easy to pick out a given article in the classification rated second class, then go through the classification and name many articles taking the same rating which have a considerably higher value, arguing therefrom, as here done by applicant, that the lower valued article should be given a lower rating. Unless the lowest

valued article in that class is taken for such comparison, other articles taking the same rating and with a lower value can also be found. Similar comparison can be made with respect to articles in any of the other classes of the classification. The same comparison can be made with respect to any classification in existence in the United States. Even on the same article there is a very wide range in values in many cases and there has never, in Canada or the United States, been that attempt at refinement that would provide for different ratings on the same article based solely on difference in value. With the very limited number of classes in the classification and the thousands of articles to be classified, the grouping of articles is necessarily more or less broad. Classification is not an exact science, nor may the ratings accorded a particular article be determined alone by the yardstick, the scales and the dollar. From its very nature and use, classification cannot be so minute as to do mathematically exact justice to every variety of commerce that may move.

The Board has frequently stated that citations of classification ratings in effect in the United States are not necessarily conclusive with respect to conditions existing in Canada unless the conditions are on all fours. Such information is informative and, from that standpoint, the Board has frequently set out the ratings in other classifications. The railways in their submissions, while stating that the ratings carried on a commodity in the United States classifications are not the governing factor in determining what the ratings should be on the same commodity in the Canadian classification, call attention to the ratings in Official, Southern and Western United States territories on candy, confectionery and nuts. Except as to the carload rating in Southern territory, the L.C.L. and C.L. ratings on candy, confectionery and salted peanuts are the same as in the Canadian classification. There, as in Canada, salted peanuts, candy and confectionery take the same ratings. In the United States the edible nuts, other than peanuts, are rated higher than in Canada. The applicant company has a number of plants in the United States. The volume of salted peanuts carried by Canadian railways is small in comparison with what is carried by the United States railways. The Interstate Commerce Commission, in 68 I.C.C., 623, in a case where complainant asked for third-class rating L.C.L., found the second-class rating on salted peanuts in the Southern Classification not unreasonable and dismissed the complaint. In 156 I.C.C., 307, the Commission dismissed a complaint against the second-class L.C.L. rating on salted peanuts in the Southern and Western Classifications, finding that rating not unreasonable. In 173 I.C.C., 366, the Commission found the second-class L.C.L. rating on salted peanuts in Southern, Western and Official Classifications not unreasonable and the complaint against the same was dismissed. An average wholesale value of 12·1 cents per pound on salted peanuts is given in this report.

Applicant furnished a statement showing on salted peanuts an average weight per cubic foot of 27·38 pounds; average value per cubic foot $3.69; average wholesale price per pound 15 cents. The ratings are second class L.C.L. and fourth class C.L. Some cases where these ratings have been prescribed by the Board are given below.

Peanut butter is provided with ratings of second class L.C.L. and fourth class C.L. The fourth-class rating was prescribed by the Board by Order No. 20925 dated November 24, 1913. The record then before the Board showed the wholesale price as ranging from 9 cents to 14¼ cents per pound and weight per cubic foot from 49 to 57 pounds.

Maple butter is provided with ratings of second class L.C.L. and fourth class C.L. Maples, Limited, Toronto, made application to the Board for ratings of third class L.C.L. and fifth class C.L. The value was given as 12½ cents per pound and $3 per cubic foot. By Order No. 21745, dated May 2, 1914, the Board directed provision in the classification for this commodity at ratings of second class L.C.L. and fourth class C.L.

Dried fruits, except apples (in other than glass or earthenware containers), are rated second class L.C.L. and fourth class C.L. In 1913, the Toronto Board of Trade, supported by a number of other organizations, applied for a reduction in ratings to third class L.C.L. and fifth class C.L., and wholesale prices were shown by the applicant as ranging from 4 cents to 17 cents per pound. The railways submitted figures that were, in some cases, somewhat higher. The weight per cubic foot, while not given, would be greater than on salted peanuts. The application was not granted (Order No. 20010, dated August 11, 1913). The same matter was again before the Board in 1925 and the Board reaffirmed its previous decision.

There was before the Board in 1925, the classification of rubber floor covering, complaint being made against ratings of second class L.C.L. and fourth class C.L.; ratings of third class L.C.L. and fifth class C.L. were applied for. The application was dismissed. The record showed the value as being from 13½ cents to 16¾ cents per pound; weight per cubic foot 128 pounds.

There is absolutely no evidence that the present ratings on salted peanuts are restricting the manufacture and consumption thereof; in fact, the applicant's statements indicate a steadily increasing business in this product.

We do not consider the present ratings are unreasonable, or unjustly discriminatory, and the application is refused.

Ottawa, Ont., November 17, 1933.

ORDER No. 50553

In the matter of the application of the Planters Nut & Chocolate Company, Limited of Toronto, Ontario, for an Order directing a reduction in the ratings of second class L.C.L. and fourth class C.L., provided on salted peanuts in other than glass containers in Canadian Freight Classification No. 18, to third class L.C.L. and fifth class C.L.

File No. 33365.96.

Tuesday, the 21st day of November, A.D. 1933.

Hon. C. P. Fullerton, K.C., *Chief Commissioner.*

S. J. McLean, *Asst. Chief Commissioner.*

F. N. Garceau, K.C., *Deputy Chief Commissioner.*

Hon. T. C. Norris, *Commissioner.*

J. A. Stoneman, *Commissioner.*

G. A. Stone, *Commissioner.*

Upon reading what has been filed in support of the application and on behalf of the Canadian Freight Association—

It is Ordered that the application be, and it is hereby, refused.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 50511

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act

File No. 34822.13.

THURSDAY, the 9th day of November, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Asst. Chief Commissioner.*

The Board Orders:

1. That the tolls published in items 71 and 72 and from Mount Uniacke, Nova Scotia, in item 135-C of Supplement No. 66 to Tariff C.R.C. No. 817, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said items 71, 72, and 135-C of Supplement No. 66 to Tariff C.R.C. No. 817, approved herein, are as follows:—

For	Rates in cents per 100 pounds
Item 71	6½
Item 72	..
Mount Uniacke, N.S.	7½
Kennetcook, N.S.	8
Item 135-C	5½

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 50512

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act

File No. 34822.13.

THURSDAY, the 9th day of November, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Asst. Chief Commissioner.*

The Board Orders:

1. That the toll published to Clifton, Nova Scotia, in item 61-C of Supplement No. 25 to Tariff C.R.C. No. 851, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 3 of Section 3 of the said Act.

2. And the Board hereby certifies that the normal toll for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said item 61-C of Supplement No. 25 to Tariff C.R.C. No. 851, approved herein, is 20 cents per 100 pounds.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 50513

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act

File No. 34822.13.

THURSDAY, the 9th day of November, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Asst. Chief Commissioner.*

The Board Orders:

1. That the toll published to Truro, Nova Scotia, in item 111-B of Supplement No. 63 to Tariff C.R.C. No. 856, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 3 of Section 3 of the said Act.

2. And the Board hereby certifies that the normal toll for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said Item 111-B of Supplement No. 63 to Tariff C.R.C. No. 856, approved herein, is 8 cents per 100 pounds.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 50514

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act

File No. 34822.14.

THURSDAY, the 9th day of November, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Asst. Chief Commissioner.*

The Board Orders:

1. That the tolls published in Tariff C.R.C. No. 708, filed by the Temiscouata Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act; the Temiscouata Railway Company's proportion to be reported at 6 cents per 100 pounds from all stations, and the Canadian Pacific Railway Company's proportion to be reported as follows:—

To	Rates in cents per 100 pounds
Chipman, N.B.	10½
Fredericton, N.B.	10½
Norton, N.B.	13½
Saint John, N.B.	12½
Woodstock, N.B.	11

2. And the Board hereby certifies that the Temiscouata and the Canadian Pacific Railway Companies' proportion of the normal tolls under subsection 3 of section 9 of the said Act, on traffic carried under the said Tariff C.R.C. No. 708, approved herein, are as follows:—

To	Rates in cents per 100 pounds	
	Temiscouata	*Canadian Pacific*
Chipman, N.B.	7½	13
Fredericton, N.B.	7½	13
Norton, N.B.	7½	17
Saint John, N.B.	7½	15½
Woodstock, N.B.	7½	14

To all other stations the Temiscouata Railway Company's proportion is 7½ cents per 100 pounds.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 50526

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act; and the Order of the Board No. 50282, dated August 29, 1933, approving tolls published in item 15, and to Beauharnois, Quebec, in item 45-B of Supplement No. 9 to Tariff C.R.C. No. E-4314 filed by the Canadian Pacific Railway Company.

File No. 34822.12

WEDNESDAY, the 15th day of November, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Asst. Chief Commissioner.*

Upon its appearing that an error was made in the said Order No. 50282,—

It is ordered: That the figures "42," opposite the words "Beauharnois, Que.," at the end of the said Order No. 50282, dated August 29, 1933, be struck out and the figures "41½" substituted therefor.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 50539

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.2

MONDAY, the 20th day of November, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Asst. Chief Commissioner.*

The Board orders: That the tolls published in the following tariffs filed by the Canadian National Railways under Section 3 of the Maritime Freight Rates Act be, and they are hereby, approved, subject to the provisions of subsection 3 of the said section 3, namely:—

Supplement 21 to Tariff C.R.C. No. E-1241
Supplement 14 to Tariff C.R.C. No. E-1689
Supplement 25 to Tariff C.R.C. No. E-1804
Supplement 7 to Tariff C.R.C. No. E-1835
Supplement 8 to Tariff C.R.C. No. E-1911
Tariff C.R.C. No. E-2070

C. P. FULLERTON,
Chief Commissioner.

GENERAL ORDER No. 522

In the matter of the General Order of the Board No. 199, dated July 24, 1917, as amended by General Order No. 226, dated April 4, 1918, prescribing regulations for the equipment of locomotives with electric headlights.

File No. 6511.5

THURSDAY, the 9th day of November, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*
F. N. GARCEAU, K.C., *Deputy Chief Commissioner.*
Hon. T. C. NORRIS, *Commissioner.*
J. A. STONEMAN, *Commissioner.*
G. A. STONE, *Commissioner.*

Upon reading the submissions filed on behalf of the Brotherhood of Locomotive Engineers, the Brotherhood of Locomotive Firemen and Enginemen, the Railway Association of Canada, and the Canadian National and the Canadian Pacific Railway Companies;

In pursuance of the powers conferred upon it by sections 34, 287, and 288 of the Railway Act, and of all other powers possessed by the Board in that behalf; and upon the report and recommendation of its operating officers,—
It is ordered as follows:—

1. That every railway company subject to the legislative authority of the Parliament of Canada be, and it is hereby, required to equip its locomotives used in road service, between sunset and sunrise, with headlights which will enable persons with normal vision in the cab of a locomotive, under normal weather conditions, to see a dark object the size of a man for a distance of 800 feet or more ahead of the locomotive. Such headlight must be maintained in good coondition.

2. That every locomotive used in road service which is regularly required to run backward for any portion of its trip, except to pick up a detached portion of its train, or in making terminal movements, shall have on the rear a headlight which will meet the requirements of this order.

3. That nothing in these regulations shall prevent the use of a device whereby the light may be diminished in yards, at stations, and on two or more tracks when approaching trains moving in opposite direction, to an extent that will enable a person or persons operating the locomotive to see a dark object the size of a man for a distance of 300 feet or more ahead of the locomotive, under normal weather conditions.

4. (*a*) That nothing in these regulations shall prevent the use of temporary devices being used to substitute the regular headlight when necessary to move a train from the point at which the headlight equipment has broken down or failed, provided the train moves at a speed not exceeding ten miles an hour over any public highway crossing not specially protected by watchman, gates, or automatic signal, until the first station with passing track or siding as shown in the time-table is reached, where an examination must be made and, if possible, the headlight put in good working condition.

(*b*) That in case repairs cannot be made at the station referred to, the train may proceed to the first repair point, displaying such light as may be available and provided at such station, passing over all public highway crossings not specially protected by watchman, gates, or automatic signal at a speed not exceeding twenty miles an hour, provided that, in the event a light cannot be furnished, the engine must be replaced or assisted by an engine displaying a proper light.

(*c*) That while proceeding to the first station and/or repair point, the whistle signal for all highway crossings not protected by watchman, gates, or automatic signal must be given the second time approaching all such crossings.

(*d*) That repairs to the equipment must be effected at the first repair point, or the engine replaced. (First repair point is such a place at which the company has the necessary facilities to make ordinary repairs to electrical or other power headlight equipment.)

(*e*) That spare bulbs and other necessary parts must be supplied at the initial terminal and carried on each locomotive, and that a list of such parts be furnished for the information of the engineer, whose duty it shall be to check over to see that such supplies are furnished before starting out on his trip from such terminal.

5. That each locomotive used in yard service between sunset and sunrise shall have two lights, one located on the front of the locomotive and one on the rear, each of which shall enable a person with normal vision in the cab of a locomotive, under normal weather conditions, to see a dark object the size of a man for a distance of at least 300 feet in front of such light; and such lights must be maintained in good condition.

6. That the said General Orders Nos. 199 and 226, dated respectively July 24, 1917, and April 4, 1918, be, and they are hereby, rescinded.

C. P. FULLERTON,
Chief Commissioner.

ACCIDENTS REPORTED TO THE OPERATING DEPARTMENT, BOARD OF RAILWAY COMMISSIONERS, FOR MONTH OF SEPTEMBER, 1933

Railway accidents	189, with	18 persons killed and	187 injured.
Railway accidents at highway crossings	23, with	7 persons killed and	30 injured.
	212	25	217

	Killed	Injured
Passengers	—	28
Employees	3	128
Others	22	61
	25	217

DETAILS OF ACCIDENTS AT HIGHWAY CROSSINGS

No. of Accidents	
	Prince Edward Island
1	Automobile—Auto driver failed to stop for crossing. Licence P.E.I. 1551.
	Nova Scotia
1	Automobile—Auto driver did not take necessary precaution. Licence N.S. 26-747.
1	Auto truck and trailer—Licences: truck, N.S. 12-411; trailer, No. 806.
	New Brunswick
1	Automobile—Auto driver failed to look out for train. Licence Que. 71748.
	Quebec
1	Automobile—Auto ran into side of train. Licence Que. H-2017.
1	Automobile stopped foul of track, struck by train. Licence Que. H-20553.
1	Pedestrian—Crawled under gates in lowered position.
	Ontario
3	Automobile—Auto driver failed to see or hear train. Licences, Ont. N-5261, D-988, HW-156.
1	Automobile—Auto driver failed to observe train. Licence Ont. AT-764.
1	Auto truck—Truck driver attempted to cross ahead of approaching train. Licence Ont. 30539-C.
1	Pedestrian—Negligence on part of pedestrian and companion.
	Manitoba
1	Auto truck—Truck driver failed to observe approaching train. Licence number not obtained.
1	Horse-drawn vehicle.
	Saskatchewan
1	Automobile—Auto driver failed to take precautions approaching crossing. Licence Sask. 62-761.
1	Automobile—Licence Sask. 4-827.
1	Horse-drawn vehicle—Failed to look out for approaching train.
	Alberta
1	Automobile—Auto driver failed to exercise proper precaution. Licence Alta. 61829.
1	Automobile—Defective auto brakes. Licence Alta. 51-935.
1	Auto truck—Truck driver failed to exercise precaution. Licence Alta. AT-9-392.
	British Columbia
1	Automobile—Auto ran into side of train. Licence Wash. 210-111.
1	Automobile—Licence B.C. 61-374.

Of the twenty-three accidents at highway crossings, twenty occurred at unprotected crossings and three at protected crossings. Seventeen of the accidents occurred during daylight hours and six at night.

Ottawa, November 24, 1933.

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The Board of

Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

Vol. XXIII Ottawa, December 15, 1933 No. 20

This publication is issued fortnightly, on the 1st and 15th of each month. Annual subscription, $3.00; single numbers, 20 cents; in quantities, 25 per cent discount. Remittances should be made to the King's Printer, Ottawa, by postal money order, express order or accepted cheque. The use of currency for this purpose is contrary to the advice of the postal authorities and entails a measure of risk. Postage stamps, foreign money or uncertified cheques will not be accepted. No extra charge is made for postage on documents forwarded to points in Canada and in the United States, but cost of postage is added to the selling price when documents are mailed to other countries. Early application should be made for copies in quantities. Subscriptions should be sent, in every case, to the King's Printer, Ottawa.

ORDER No. 50562

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.14

SATURDAY, the 25th day of November, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the toll published in Tariff C.R.C. No. 709, filed by the Temiscouata Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said Tariff C.R.C. No. 709, approved herein, is 2½ cents per 100 pounds.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 50563

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.14

SATURDAY, the 25th day of November, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the toll published in Tariff C.R.C. No. 710, filed by the Temiscouata Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said Tariff C.R.C. No. 710, is 4½ cents per 100 pounds.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 50564

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13

SATURDAY, the 25th day of November, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. McLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the tolls published in item 91 of Supplement No. 34 to Tariff C.R.C. No. 812, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act: the Dominion Atlantic Railway Company's proportion to be reported at 24·4 cents per 100 pounds.

2. And the Board hereby certifies that the Dominion Atlantic Railway Company's proportion of the normal toll for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said item 91 of Supplement No. 34 to Tariff C.R.C. No. 812, approved herein, is 31·1 cents per 100 pounds.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 50565

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13

SATURDAY, the 25th day of November, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. McLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the toll published from Sheffield Mills, Nova Scotia, in item 5-B of Supplement No. 26 to Tariff C.R.C. No. 851, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said item 5-B of Supplement No. 26 to Tariff C.R.C. No. 851, approved herein, is 25 cents per 100 pounds.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 50566

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.15

SATURDAY, the 25th day of November, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the toll published to Edmundston, New Brunswick, in Supplement No. 21 to Tariff C.R.C. No. 160, filed by the Fredericton and Grand Lake Coal and Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said Supplement No. 21 to Tariff C.R.C. No. 160, approved herein, is $1.50 per net ton.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 50572

In the matter of the application of the Canadian Pacific Railway Company, hereinafter called the "Applicant Company," under Section 330 of the Railway Act, for approval of Supplement No. 1 to its Standard Freight Mileage Tariff C.R.C. No. W-2871, on file with the Board under file No. 1179.56.

TUESDAY, the 28th day of November, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

Upon the report and recommendation of the Assistant Chief Traffic Officer of the Board,—

It is ordered: That the said Supplement No. 1 to the applicant company's Standard Freight Mileage Tariff C.R.C. No. W-2871, on file with the Board under file No. 1179.56, be, and it is hereby, approved; the said tariff, with a reference to this order, to be published in at least two consecutive weekly issues of the *Canada Gazette.*

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 50599

In the matter of tariffs and supplements to tariffs, filed under the provisions of the Martime Freight Rates Act.

File No. 34822.12

THURSDAY, the 7th day of December, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the tolls published on pulpwood to St. George, New Brunswick, and on pit props from Cody, New Brunswick, in Supplement No. 24 to Tariff C.R.C. No. E-4322, filed by the Canadian Pacific Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said Supplement No. 24 to Tariff C.R.C. No. E-4322, are as follows:—

To St. George, N.B., From	Rates in cents per 100 pounds
Bay Shore, N.B.	5
Barbe Dam, N.B. to Gilman, N.B.	4½
Moore's Mills, N.B.	5
Maxwell, N.B. to St. Stephen, N.B.	4½
Milltown, N.B.	4½
Dunbarton, N.B. to St. Andrews, N.B.	4½
Oak Bay, N.B. to Gidden, N.B.	4½
McMinn, N.B. to Bonny River, N.B.	3½
Utopia, N.B.	2½
Sherwood Siding, N.B. to New River, N.B.	3½
Lepreaux, N.B. to Allan Cot, N.B.	4½
Spruce Lake, N.B.	5
Pit Props from Cody, N.B.	4

C. P. FULLERTON,
Chief Commissioner.

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The Board of

Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

Vol. XXIII Ottawa, January 1, 1934 No. 21

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Application of the Canadian Pacific Railway Company for an Order of the Board granting approval of the abandonment of its McAuley Subdivision, Manitoba District (Kirkella to McAuley Line).

(File No. 4766.13)

REPORT TO THE BOARD, AFTER HEARING (OCTOBER 16, 1933), BY FULLERTON, CHIEF COMMISSIONER:

The Canadian Pacific Railway Company applies under Chapter 47 of the Statutes of Canada for the year 1932-33, for the approval of the Board to the abandonment of the operation of its line of railway between Kirkella and McAuley, in the province of Manitoba.

Before the year 1933, unless there was a statutory provision requiring a railway company to operate its road, it was at liberty to abandon the whole or any portion of its line. The statute above referred to, which amends the Railway Act by adding section 165A, provides that,—

> "A company may abandon the operation of any line of railway with the approval of the Board, and no company shall abandon the operation of any line of railway without such approval."

Unlike the corresponding provision in the Interstate Commerce Act, Parliament has laid down no principle upon which the Board should act in granting or withholding approval. Section 1 (18) of that Act provides that

> "no carrier by railroad subject to this Act shall abandon all or any portion of a line of railroad, or the operation thereof, unless and until there shall first have been obtained from the Commission a certificate that the present or future public convenience and necessity permit of such abandonment."

In a majority of the cases in which the Interstate Commerce Commission issued certificates authorizing abandonment, referred to and summarized in the Index to Vol. 131, I.C.C.R., pp. 805 *et seq*, it will be noted that either the industries served had ceased to operate, or that other adequate transportation facilities, either by rail or truck, were available, and that serious public inconvenience would not result from the abandonment.

The American decisions lay down that the mere fact that a branch line of railroad does not yield a profit from operation will not in every case justify its abandonment.

"The point at which abandonment shall be considered justifiable is a matter of sound judgment, and must be determined by the circumstances of each case." Abandonment of line by Southern Railway, 105 I.C.C.R. 228, at p. 233.

The issue as laid down by the Interstate Commerce Commission is whether or not the inconvenience occasioned by abandonment and the consequent losses to the public outweigh the burden that continued operation of the branch would impose upon the railway and upon interstate commerce. See Detroit, Toledo and Ironton R.R. Co. Abandonment, 187 I.C.C.R. 433, at p. 438.

In Chicago, Milwaukee, St. Paul and Pacific R.R. Co. Abandonment, 184 I.C.C.R. 687, at p. 692, the Commission said:—

> "A community unable to support a railroad cannot justly demand its continued operation at a loss in order to maintain the value of private property within that community. On the other hand, mere showing of unprofitable operation of a portion of a railroad system does not necessarily justify abandonment of that portion; but there is a point at which lack of earning power of part of a system justifies its abandonment without regard to the system operations as a whole. The transportation needs of a community or section must be weighed against the burden that the cost of rehabilitation, maintenance, and operation would impose upon commerce. The point at which abandonment shall be considered justifiable is a matter of sound judgment, and must be determined by the circumstances of each case."

The application in the present case covers the line between the town of Kirkella on the Broadview Subdivision of the main line of the Canadian Pacific Railway and the town of McAuley on the Neudorf Subdivision, a distance of 16·83 miles.

The Neudorf Subdivision is part of the northerly line of the Canadian Pacific Railway now extending from Regina through Bulyea to Virden on the main line of the Canadian Pacific Railway, a point 47·23 miles west of Brandon. In 1903 this line connected with the main line at Kirkella, there being no line of railway between McAuley and Virden. The line between McAuley and Kirkella was completed in 1903.

In 1910 the Canadian Pacific Railway Company commenced the construction of a line from McAuley direct to Virden. This was completed about 1913.

The present train service between Regina and Brandon via the northerly line is a tri-weekly service; Westbound, on Tuesday, Thursday and Saturday, and eastbound, on Monday, Wednesday and Friday. On Wednesday the eastbound train runs over the McAuley Subdivision, which is the line in question here, between Kirkella and McAuley, and from Kirkella to Virden over the main line. Westbound, on Thursday, it runs over the main line to Kirkella and thence to McAuley. The distance from McAuley to Virden via the McAuley Subdivision is 39·9 miles, while the distance via the Neudorf Subdivision is 36·4 miles. In addition to the passenger trains above referred to, a way-freight is operated between Brandon and Neudorf via the McAuley Subdivision, westbound on Tuesday and eastbound on Friday.

In its application the Canadian Pacific Railway Company says:—

> "The McAuley Subdivision has never produced a great deal of traffic and in late years even the small amount which did originate on the line has been steadily declining and has now reached the point where the officers of the company are of opinion that, especially in view of the fact that the territory is well served by other lines, it would be wasteful to continue operation."

Accompanying the application were statements showing the operating revenues and expenses during the three years from May 1, 1930, to the end of April, 1933. The revenues as shown by the statements filed are as follows:—

1930-31	$16,262 00
1931-32	8,587 00
1932-33	7,215 00
or an average of	$10,688 00

Against this the company shows operating expenses as follows:—

1930-31	$ 5,260 00
1931-32	3,186 00
1932-33	2,496 00

In addition there is filed a statement showing the cost of maintenance of way and structures as follows:—

1930-31	$10,174 00
1931-32	9,218 00
1932-33	6,813 00

In addition to the above, figures for maintenance of way and structures is added the sum of $4,737 yearly for superintendence, tolls and miscellaneous account, which is arrived at on a mileage basis for the Manitoba District. There is nothing in the figures to show what portion of this amount is for superintendence and what portion is for tolls and miscellaneous account, but I would assume that the bulk of the charge is for superintendence. So far as this figure is concerned, inasmuch as the only station on the Kirkella Subdivision is Manson, situate half way between Kirkella and McAuley, which is a flag station only, the elimination of this subdivision would not reduce the cost of superintendence by a single dollar, and for that reason I do not take it into consideration in arriving at the figures.

Putting these figures together I find that in 1930-31 the receipts were		$16,262 00
Against this there were operating expenses	$ 5,260	
And maintenance of way and structure	10,174	
Making together		15,434 00
Or a surplus of		$ 828 00
In 1931-32 the receipts were		$ 8,587 00
Against this there were operating expenses	$ 3,186	
And maintenance of way and structures	9,218	
Making together		12,404 00
Showing a deficit of		$ 3,817 00
In 1932-33 the receipts were		$ 7,215 00
Against this there were operating expenses	$ 2,496	
Maintenance of way and structures	6,813	
Making together		9,309 00
Showing a deficit of		$ 2,094 00

The parties opposing the application pointed out on the hearing that the selection of the three years for which figures are given is unfair, inasmuch as

these were the three lean years when crops were poor and general conditions bad. They requested that the railway company furnish figures covering the revenues and expenses for a period of ten years. The company was unable to supply the figures for ten years as records were not available, but furnished figures for the period since May 1, 1926. The figures show that for the years 1926-27, 1927-28, 1928-29, 1929-30, the average earnings per year were $20,505.

The average cost of train operation during this period was $8,117, and the average cost of maintenance of way and structures excluding superintendence, etc., was $11,566, together making $19,683, or a surplus of $822.

The figures of revenue from express for the first three years of the 1926-1930 period are not available as the records have been destroyed. Assuming they were as great in each of those years as they were in the last year, 1929-30, namely $1,349, there would be an addition to this surplus of over $4,000.

I am not at all sure that the complete receipts which should be credited to Manson have been given. The figures for tickets seem rather small, and it is very properly suggested that as Manson is a flag-station, and a passenger can only buy from the conductor a ticket for a short distance, it may very well be that a larger amount should have been credited. There is another feature of the receipts upon which I am not very clear. I would suppose that credit should be given for through traffic which passed over the McAuley Subdivision, but apparently no such credit has been given.

From an examination of all the figures it appears to me that considering present conditions, the company is not sustaining any appreciable loss in the operation of this subdivision. On the other hand, let us look at the situation which confronts the people of Manson and the farmers who make Manson their headquarters, in the event of this line being abandoned. When this line was built in 1903 there was no such a place as Manson, and apart from a few homesteaders the greater portion of the land in the vicinity of the line was owned by the Canadian Pacific Railway Company. This land has since been sold to farmers, who have been cultivating it and drawing their wheat for the most part to the elevators at Manson.

The evidence given at the hearing shows that if the line were abandoned the farmers who in the past have been hauling their grain to the elevators at Manson will be obliged to haul it to some point on either the Broadview or Neudorf subdivisions, which will involve an additional haul of from one to six miles. For example, Mr. MacDonald, who lives about one and one-half miles south of Manson, says that he can make eight trips a day if he is pushed, and quite easily six, which would bring his deliveries to one cent a bushel or a trifle less, but that if he were compelled to haul to Fleming, which is on the Broadview subdivision, he could only make one trip a day, which would mean that it would cost him six cents a bushel to deliver in Fleming.

The committee appointed by the residents of the district interested estimate that the extra haul will be an average of five additional miles, and that with an average crop of 125,000 bushels the cost of the extra haul on grain alone would amount to over $3,000. In addition to this there would be the extra cost and inconvenience in connection with the shipping of stock, hauling of coal, lumber, etc. Furthermore, the witnesses say that their market roads are built to Manson and in order to haul their grain to points on the Broadview and Neudorf subdivisions new roads would have to be built to these points which would cause a lot of extra expense to the people of the municipality who can ill afford to bear it at the present time.

The population in the district tributary to Manson numbers 386.

Let us now consider how the abandonment of this line will affect the village of Manson. This village is situate half way between Kirkella and McAuley. has a population of 85, with property of an assessed value of $26,500. There

are 14 residences in the village, two general stores, two blacksmith shops, three churches, a consolidated school, a skating rink, a post-office, two grain elevators and a coal-shed.

One of the elevators and the coal-shed are owned by the United Grain Growers. The elevator was built in 1911 and has been operated by that company since 1917. It is thoroughly up to date, and has had a cleaner and air dump installed in recent years. The total investment in this property is $16,661, and it is estimated that it will cost to tear it down, transport it to another point and rebuild it, about $8,800.

The other elevator is owned by the Manson Co-Operative Elevator Association consisting of 54 members. This elevator was established in 1928, and there is invested in the property $19,186. It has a capacity of 30,000 bushels, and is equipped with an Emerson 4-unit rotary disc cleaner and is in every respect thoroughly up to date. It is estimated that it will cost to remove it to some other point between $8,000 and $9,000.

In connection with both elevators, no estimate is made of the loss of business connections which would result from their removal to other locations.

One of the stores is valued at between $2,500 and $3,000, and at the present time carries a stock of between $6,000 and $7,000.

The abandonment of the railway would practically mean the end of Manson. The farmers would haul their wheat to other points and would naturally do their business at those points, and for all practical purposes the dwellings, school, etc., would be of little value.

Apart altogether from the inconvenience and financial loss that would be occasioned to the residents of Manson and the district tributary to Manson, there is a feature of this case which must be mentioned. I refer to the fact that the railway company making the application originally owned practically all the land in the district affected, and sold it to the people who are now opposing this application. The bulk of these sales were made between 1902 and 1905.

On the hearing a witness, Alex. MacDonald, filed a chart (Exhibit No. 8) showing the district tributary to Manson. The railway company was required to file, and did file, a detailed statement of the lands sold by it in the vicinity. I have had this list checked with the chart (Exhibit No. 8) and find that within this district the Canadian Pacific Railway Company sold 17,280 acres of land and, in addition, sold the Manson Townsite.

It can be argued with some force that these purchases were made on the implied representation by the company that the line in question would continue to operate and that it would be entirely unfair to these purchasers to permit the company at the present time to abandon this line.

When the line from McAuley to Virden was completed in 1913, a letter was written to the Board by the secretary-treasurer of Manson asking whether there was any truth in the rumour that the Canadian Pacific Railway Company was contemplating the abandonment of its line from Kirkella to McAuley. The Board communicated the inquiry to the railway company which replied that "while we would certainly like to take up the line between Kirkella and McAuley no steps will be taken towards doing this until satisfactory arrangements are made with the people of Manson." If this condition were reasonable in 1913, it is certainly much more reasonable to-day.

As late as 1928 the company permitted the Co-Operative Elevator Association to spend over $19,000 on the construction of an elevator at Manson and in fact furnished the site upon which the elevator is built.

Taking all the facts into consideration I am of the opinion that the application should, for the present at least, be refused.

Respectfully submitted,

C. P. FULLERTON,
Chief Commissioner.

OTTAWA, December 15, 1933.

Concurred in by the Assistant Chief Commissioner, the Deputy Chief Commissioner and Commissioners Norris, Stoneman and Stone.

ORDER No. 50628

In the matter of the application of the Canadian Pacific Railway Company, under Section 165A of the Railway Act (Chapter 47 of the Statutes of Canada, 23-24 George V), for approval of the abandonment of its McAuley Subdivision, Manitoba District (Kirkella to McAuley line), in the Province of Manitoba. File No. 4766.13

SATURDAY, the 16th day of December, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*
F. N. GARCEAU, K.C., *Deputy Chief Commissioner.*
Hon. T. C. NORRIS, *Commissioner.*
J. A. STONEMAN, *Commissioner.*
G. A. STONE, *Commissioner.*

The evidence in this application having been heard at Virden, Manitoba, on October 16, 1933, by the Chairman of the Board, appointed under section 12 of the Railway Act, in the presence of counsel for the United Grain Growers, Limited, the municipality of Archie, residents of Manson and district, the Manson Co-operative Elevator Association, and the applicant company, and what was alleged, the said Chairman having reported to the Board, and the said report having been adopted,—

It is ordered: That the application be, and it is hereby, refused.

C. P. FULLERTON,
Chief Commissioner.

Application of the Michigan Central R.R. Co. (New York Central R.R. Co. lessee), under Sections 51 and 257 of the Railway Act for a review of Order No. 33218, dated December 7, 1922, as amended by Order No. 41518, dated October 5, 1928, for authority to substitute automatic bells and wigwag signals at Furnival Road, Rodney, Ont., for the existing crossing gates; and/or, in the event of the gates being continued as at present, that the Municipalities of the Village of Rodney and the Township of Aldborough be ordered to pay the difference in the cost of operation and maintenance of said automatic bells and wigwag signals and the more expensive and superfluous crossing gate protection.

Case No. 4575.

JUDGMENT

MCLEAN, ASSISTANT CHIEF COMMISSIONER:

The Pere Marquette Railway Company also joins in this application, and the other applications which are dealt with separately. These are the applications for Main street, Dutton, Graham street, West Lorne, and King street, Highgate, Ont.

Detailed statistical information was put in in connection with the various applications, and in addition there was general evidence. Counsel for the railway company stated that so far as it was concerned the general evidence would stand for all the cases before the Board affecting the crossings in question. As far as matters of traffic were concerned, and accident records, there were of course variations at the crossings; but it was set out that if the representative of the Municipalities had no objection, the railway company would have no repetition of the evidence tendered upon the Rodney application. This was acquiesced in by the representative of the municipalities.

In the Rodney application the railway company was represented by Messrs. Kingsmill and Price, Mr. A. St. Clair Leitch appeared for the Village of Rodney and the Township of Aldborough, and Mr. E. C. Aurey for the Pere Marquette Railway Company. The application of the railway is dated May 18, 1933. In its letter of May 18, on file, the Michigan Central R.R. states that a 24-hour service is proposed. It also refers to the fact that the Pere Marquette approves of the changes proposed.

On May 22 the Clerk of Rodney sent in a resolution opposing the removal of the gates. He claimed the wigwag system would increase the hazard to human life and make it more dangerous for vehicles. He pointed out that the gates were situated on the county roads within the village, and that being so the village would not be entitled to contribute to the maintenance of same.

The matter was spoken to at St. Thomas, October 11. The railway company bases its application on three grounds: First, that experience has shown and is showing that the visual signal—the wigwag and bell—is more effective in the prevention of accidents than the old-time crossing gates. The company at the same time realizes that safety is the prime consideration, and it is anxious for safety. The second ground is that experience has shown in the past and is now showing that the visual sign is equally if not more efficient in actual operation than protection by crossing gates. The third ground is that of economy. It is set out that the wigwag and bell is a much more economical method of protection than the crossing gate.

In Talbot street crossing, Essex (Case No. 588), 23 Board's Judgments and Orders, p. 235, and Queen street crossing, Tilbury (Case No. 4610), 23 Board's Judgments and Orders, p. 238, statistical information was given in regard to types of protection at present in use and the trends in connection therewith. Reference may be made to these.

Mr. Hill, the Safety Agent of the N.Y.C.R.R. Lines, was on the stand in the Tilbury and the Essex case, and was also on the stand for the present case and examined by Mr. Price for the M.C.R.R. Mr. Hill referred in his evidence to the increase in the number of visual protective cases and the decrease in the use of gates. He referred to the experience on the New York Central and said that on the Michigan Central the proportion of the crossings having protection was about 75 per cent visual, that is to say, that out of the 714 crossings on the railway where there is some type of protection three-quarters have visual signals. The following is excerpted from the evidence, in which he was examined by Mr. Price (Vol. 608 Ev., p. 1238):

> "Out of the total number of crossings protected by gates there was 11 per cent, and they produced 30 of the accidents. If you want to bring it down to the Canadian Division, which is getting nearer, we have on the Canadian Division of the Michigan Central 150 crossings that have some type of protection. Of this number 90 per cent have visual protection and 9 per cent have gates. The 90 per cent of the crossings having visual protection produce one-seventh of the accidents. We have in Canada on the Michigan Central 9 per cent protected by gates, and they produced exactly the same number of accidents; in other words, on the Canadian Division of the Michigan Central Railroad the pro-

portion of crossings having protection as between gates and wigwags is 1 to 7, and they produced identically the same number of accidents. We have seven times the number of crossings with wigwag protection as we have with gates, and they had exactly the same number of accidents."

As bearing on the trends which witness said were to be seen in the records of protective devices, the following material may be referred to. It was not presented by the railway at the hearing, nor has this information been submitted by the railway, but it appears to be useful as being a check on the figures submitted. Class 1 steam railways in the United States include those with over $1,000,000 of earnings in each case. This class embraces the great bulk of the railways, covering as it does 92 per cent of the mileage and 97 per cent of the earnings of the railways.

In 1930 the Committee on Railroad Grade Crossings, Elimination and Protection, submitted its report at the meeting of the Railroad Commissioners of the United States at Charleston, South Car. Commissioner McManamy, the Chairman of the Committee in question, was at that time Chairman of the Interstate Commerce Commission. The figures are given for five years ending December 31, 1929. Summarizing these by taking the first and last years, the following results are obtained:—

Protection	1925	1929
Gates, with or without other protection, operated 24 hours per day	3,395	3,168
Gates, with or without other protection, operated less than 24 hours per day	2,925	2,288
Watchmen alone, or with protection other than gates, on duty 24 hours per day	1,272	1,258
Watchmen alone, or with protection other than gates, on duty less than 24 hours per day	6,635	5,779
Both audible and visible signals without other protection	5,742	8,815
Audible signals only	5,668	4,244
Visible signals only	1,604	4,638

This shows, in 1929, 5,466 crossings protected by gates as compared with 6,320 in 1925. In 1925 there were 5,742 crossings protected by audible and visual signals as compared with 8,815 in 1929. In the period concerned, 1925-1931, signals have increased by 50 per cent, while gates have decreased by 20 per cent. It is manifest that the readjustments in connection with protection are related to the increase in automobile movements on the highways.

The Proceedings of the Signal Section of the American Railway Ass., Vol. 30, No. 1, deal with the papers presented at the 39th annual meeting of the association at New York, May 9-10, 1933. Table 23 gives the following summary information for first-class railways:—

Type of Protection	1930	1931
Gates	5,007	4,902
Watchmen	6,714	6,430
Signal	18,566	19,720

These figures are interesting as illustrating the trends both in the case of gates and signals.

Furnival Road (through an error in typewriting this appeared as Furncoal) runs north and south through the village of Rodney, and the Michigan Central has three tracks crossing the street. The northerly track is for westbound traffic, the centre track for eastbound traffic, and the southerly track is a siding. There are gates on each side of the Michigan Central tracks. In the case of the Pere Marquette there is a main line track, also a siding, crossing the street, and there are two gates, one on each side. The distance between the lines of the Michigan Central and the main line of the Pere Marquette is approximately fifty yards. The gates are operated between the hours of 6 a.m. and 1 a.m. daily. It is proposed by the M.C.R.R. that if bell and wigwag are allowed it

should be for a twenty-four hour period. The cost of the wages and maintenance of the gates at present in place is approximately $1,720 per annum. In general the gates cost, for maintenance and operation, approximately $2,000 per annum, while the cost of maintenance and operation of bell and wigwag would be less than $200.

Exhibit 5 filed by the M.C.R.R., covering the traffic from December 21, 1932, to January 20, 1933, shows an average per day of 36 trains, 486 vehicles, and 538 pedestrians. Exhibit 6, also filed by the railway, covering the period from June 17 to July 1, 1933, shows an average per day of 37 trains, 916 vehicles, and 1,059 pedestrians. This is based on the figures from 6 a.m. to 1 a.m.

In the evidence of witness Hill it was stated that a census had been made by the railway of a large number of crossings on the New York Central, and this in various instances ran to more than 5,000 motor vehicles in ten hours, to say nothing of pedestrian traffic. These crossings were protected by visual protection. The P.M. Ry. stated it was joining in the application for proposed bell and wigwag protection, and that it adopted the evidence of the M.C.R.R., subject to what had been said as to protection at most of these crossings.

Mr. Gillis, reeve of Rodney, was examined by Mr. Leitch. He said the removal of the gates would create a dangerous situation. He referred to the view of the crossing being obscured by buildings, and stated that a wheat elevator was located between the two railways. Mr. Leitch, in summing up his position, said that he had very few observations to make, and he thought the facts had been pretty well elucidated and presented to the Board. The municipalities took the position that they were content with the gates as they are at present, and while they were having just as much difficulty economizing as the railways, they were just as anxious as the railways to have anything that would be more economical than what existed at present; and he urged that the gates be allowed to remain in place.

These remarks apply to the other cases later dealt with.

Approaching the M.C.R.R. tracks from the north the view is obstructed in both directions by trees. The view in the northeast angle can easily be improved by the removal of some shrubs growing near the sidewalk, on railway property. The other trees do not obstruct the view to any extent, as it is possible to see under the branches. In the northwest angle the view is obstructed by trees on private property until one is forty feet from the track.

Going on south the view of trains from the west on the Pere Marquette Railway is obstructed by a flour mill, and if there are cars standing on the flour mill siding one does not get a view of approaching trains until one is about nine feet from the crossing. The view of trains from the east is good.

Approaching the crossings from the south the view of trains from the west on the Pere Marquette Railway is obstructed until one is about nine feet from the crossing, if there are cars on the siding, and the view of trains from the east on the main track is limited by the station until one is forty feet from the track.

Going on north the view of trains from the west is limited by the flour mill until one is about fifty feet from the main track, and if there are cars on the siding the view is obstructed until one is only a few feet from the eastbound main track. The view of trains from the east on the Michigan Central Railroad is obstructed by an elevator until one is about forty feet from the westbound main track, and when there are cars on the siding until one is about eighteen feet from the westbound track.

I think that order should go providing for double bells and wigwags to be installed on both railways, in lieu of the gates, the cost of construction and maintenance to be on the railway in each case. All shunting movements over the crossing, both on the Michigan Central and the Pere Marquette railways, to be flagged by one of the trainmen; and the Michigan Central Railroad Company

to remove the shrubs along the sidewalk on its property at the northeast angle of the crossing. The exact location of the bells and wigwags will be taken care of by a provision requiring the railway companies to file detail plans showing the layout.

December 4, 1933.

Commissioners Norris and Stoneman concurred.

ORDER No. 50626

In the matter of the joint application of the Michigan Central Railroad Company (New York Central Railroad Company lessee) and the Pere Marquette Railway Company, hereinafter called the "Applicant Companies," under Sections 51 and 257 of the Railway Act, for a review of Order No. 33218, dated December 7, 1922, as amended by Order No. 41518, dated October 5, 1928, for authority to substitute automatic bells and wigwags at the crossing of Furnival Road, Rodney, Ontario, for the existing crossing gates; and/or, in the event of the gates being continued as at present, that the Village of Rodney and the Township of Aldborough be ordered to pay the difference in the cost of operation and maintenance of the said automatic bells and wigwags and the more expensive and superfluous crossing gates protection.

Case No. 4575

FRIDAY, the 15th day of December, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*
Hon. T. C. NORRIS, *Commissioner.*
J. A. STONEMAN, *Commissioner.*

Upon hearing the application at the sittings of the Board held at St. Thomas, October 11, 1933, in the presence of counsel for the applicant companies, the village of Rodney, and the township of Aldborough, and what was alleged,—

It is ordered:

1. That leave be, and it is hereby, granted the applicant companies to install, in lieu of the gates required to be maintained under the said Orders Nos. 33218 and 41518, double bells and wigwags on both railways at the crossing of Furnival road, in the village of Rodney and province of Ontario, in accordance with the Standard Specifications for Highway Crossing Signals, approved under General Order No. 468; detail plans showing the layout thereof to be submitted for the approval of an engineer of the Board.

2. That the Michigan Central Railroad Company remove the shrubs along the sidewalk on its property at the northeast angle of the crossing.

3. That any shunting movements over the said crossings be flagged by one of the trainmen.

4. That the cost of installing and maintaining the said bells and wigwags on each railway be borne and paid by the applicant companies respectively.

C. P. FULLERTON,
Chief Commissioner.

Joint Application of the Michigan Central R.R. Co. (New York Central R.R. Co. lessee) and the Pere Marquette Ry. Co., under Sections 51 and 257 of the Railway Act, for a re-consideration of Order No. 8942, dated November 30, 1909, as amended by Order No. 26045, dated April 25, 1917; and, further, for authority to remove the crossing gates at King street, Highgate, Ont., installed under the said Orders, and to substitute automatic bells and wigwag signals in their stead; and/or, in the event of the gates being retained, that the Municipality of the Township of Oxford be ordered to pay the difference in the cost of operation and maintenance of the said automatic bells and wigwag signals and the more expensive crossing gates protection.

File No. 11617.1

JUDGMENT

McLean, Assistant Chief Commissioner:

The Pere Marquette Ry. Co. appeared in this, as in the other cases, through its legal representative, Mr. E. C. Aurey. The same solicitors were present to represent the different parties as in the other cases.

The M.C.R.R. has three lines, the northerly line being for westbound traffic, the middle one being the eastbound main line, and the south track being a switching track.

Provincial Highway No. 3 is approximately 4 miles to the south, and runs in a parallel direction to the railway. Provincial Highway No. 2, which also runs in a parallel direction to the railway, is approximately 9 miles north of the village. The distance between the Michigan Central R.R. and the Pere Marquette Ry. is approximately 120 feet.

Exhibit 5 filed by the M.C.R.R. for the period from June 17, 1933, to June 30, 1933, for the full 24-hour period, shows a daily average of 29 trains, 211 vehicles, and 85 pedestrians.

Exhibit 4, for the same condition as to hours, for the period from December 24, 1932, to January 23, 1933, shows a daily average of 29 trains, 166 vehicles, and 60 pedestrians.

Exhibit 10 filed by Mr. Leitch for the village of Highgate, is stated to be a check of traffic prepared by the County roads organization, and is for the month of May, 1933. It shows a daily average of 38 trains, 211 vehicles, and 134 pedestrians. It also shows a daily average of 45 school children. Mr. Attridge, Clerk of the village of Highgate, when the application was served by the railway company, forwarded on behalf of the village a resolution protesting against the removal of the gates. He emphasized the movement of children to and fro across the highway as being very important. Mr. Attridge was called at the hearing by Mr. Leitch, and he emphasized the submission already made.

Appoaching the crossings from the north there is a good view of trains from both directions on the M.C.R.R. Going on south the view of trains from both directions is somewhat obstructed by buildings. These views are well shown on the plan dated August 4, 1933. Approaching the crossings from the south there is a good view of trains from both directions on the P.M.Ry. when there are no cars on the siding in the southeast angle. When there are cars on this siding the view is somewhat restricted until one is about 35 feet from the track. Going on north the view of trains on the M.C.R.R. from the west is obstructed by the stockyards until one is about 20 feet from the main track, and when there are cars on the siding until one is six feet from the track. Trains from the east are visible when one is 45 feet from the track, the view being restricted by buildings, and when there are cars on the siding this view is cut down to 20 feet. The crossings are about one-half mile south of the village.

I think that an order should go for the installation of double bells and wigwags in place of the gates, the cost of installation and maintenance to be upon the railway company in each case. Any shunting movements over the crossing to be flagged by one of the trainmen. The exact location of the bells and wigwags to be taken care of by a provision requiring the railway companies to file detail plans showing the layout.

December 4, 1933.

Commissioners Norris and Stoneman concurred.

ORDER No. 50625

In the matter of the joint application of the Michigan Central Railroad Company (New York Central Railroad Company lessee) and the Pere Marquette Railway Company, hereinafter called the "Applicant Companies," under Sections 51 and 257 of the Railway Act, for reconsideration of Order No. 8942, dated November 30, 1909, as amended by Order No. 26045, dated April 25, 1917; and, further, for authority to remove the gates at the crossing of King Street, Highgate, Ontario, installed under the said Orders, and to substitute automatic bells and wigwag signals in their stead; and/or, in the event of the gates being retained, that the Township of Orford be ordered to pay the difference in the cost of operation and maintenance of the said automatic bells and wigwag signals and the more expensive crossing gates protection.

File No. 11617.1

Friday, the 15th day of December, A.D. 1933.

Hon. C. P. Fullerton, K.C., *Chief Commissioner.*
S. J. McLean, *Assistant Chief Commissioner.*
Hon. T. C. Norris, *Commissioner.*
J. A. Stoneman, *Commissioner.*

Upon hearing the application at the sittings of the Board held at St. Thomas, October 11, 1933, in the presence of counsel for the applicant companies and the village of Highgate, and what was alleged,—

It is ordered:

1. That leave be, and it is hereby, granted the applicant companies to install, in lieu of the gates required to be maintained under the said Orders Nos. 8942 and 26045, double bells and wigwags on both railways at the crossing of King street, in the village of Highgate and province of Ontario, in accordance with the Standard Specifications for Highway Crossing Signals approved under General Order No. 468; detail plans showing the layout thereof to be submitted for the approval of an engineer of the Board.

2. That any shunting movements over the said crossing be flagged by one of the trainmen.

3. That the cost of installing and maintaining the said bells and wigwags on each railway be borne and paid by the applicant companies respectively.

C. P. FULLERTON,
Chief Commissioner.

Application of the Michigan Central R.R. Co. (New York Central R.R. Co. lessee), under Sections 51 and 257 of the Railway Act, for the review of Orders Nos. 6424, dated February 25, 1909, and 33642, dated May 8, 1923; and, further, for an Order authorizing the Railway Company to remove crossing gates at Main Street, Dutton, installed under the said Orders, and to substitute automatic bells and wigwags in their stead; and/or, in the event of the Board ordering that gates be retained as the form of protection at this crossing, that the Municipalities of the Village of Dutton and the Township of Dunwich be ordered to pay the difference in the cost of operation and maintenance of said automatic bells and wigwag signals and the more expensive crossing gates protection.

Case No. 4576

JUDGMENT

McLean, Assistant Chief Commissioner:

The Michigan Central Railroad Company and the Pere Marquette Railway Company join in this application. The parties were represented at the hearing by the same counsel as in the Rodney application. The village of Dutton and the township of Dunwich were served with copy of the application by the railway company on May 18, 1933. They were traced for answer on June 5. The village of Dutton wrote on June 8 submitting a resolution opposing the removal of the gates, and claimed that the present system was satisfactory. It referred to the students attending the public school and the high school.

Main street, Dutton, is crossed by the Michigan Central eastbound and westbound lines. The Pere Marquette has a single line about 90 feet south of the Michigan Central. The Michigan Central Railroad has gates on the north and south sides of its own lines, and on the south side of the Pere Marquette line there is another gate. Provincial Highway No. 2 is approximately 9 miles north of the village of Dutton. Provincial Highway No. 3 is approximately 4 miles south of the village.

The gates at Dutton are operated from 6 o'clock in the morning until 10 o'clock at night, with the exception of Saturday, when the gates are operated until midnight.

Exhibit 4 filed by the M.C.R.R. gives a statement of traffic from December 21, 1932, to January 19, 1933, from 6 o'clock in the morning until 10 o'clock in the evening, and shows an average per day of 29 trains, 458 vehicles, and 443 pedestrians.

Exhibit 5 shows, for the period from June 16 to June 30, 1933, a daily average of 25 trains, 655 vehicles, and 498 pedestrians. This is from 6 a.m. until 10 p.m. daily, except on Saturday, when it runs from 6 a.m. until 12 p.m.

As pointed out, a resolution had been submitted by the village of Dutton. At the hearing Mr. Leitch, solicitor for the village, appeared with Mr. Arch. McCallum, reeve of the village. He emphasized the traffic of school children across these tracks as being important.

Approaching the crossings from the south the only obstruction to the view is the Pere Marquette station in the southwest angle. There is a highway running nearly parallel to the railways on the south side, and it is possible to see approaching trains from behind the station. Approaching the crossing from the north the view of trains from the west is fair. There is a tree near the right of way, about 180 feet from the crossing, that should be removed. As to trains from the east, the view is somewhat obstructed by shrubs along the right of way fence, on the piece of land marked "Park." This land is owned by the M.C.R.R. These shrubs should be removed, and the low branches on the trees farther back

should be cut away. There are no sidings crossing the highway on which standing cars might obstruct the view.

Order, I think, should go providing for double bells and wigwags on both railways, in lieu of the gates, the expense of construction and maintenance to be on the railway company in each case. The M.C.R.R. should remove the shrubs along its right of way fence and cut away the lower branches on the trees on the piece of ground marked "Park," in the northeast angle of the crossing, shown on the plan. The exact location of the bells and wigwags to be taken care of by a provision requiring the railway companies to file detail plans showing the layout. The order should also provide that all shunting movements over the crossing be flagged by one of the trainmen, and that the installation be so arranged on the M.C.R.R. that the bells and wigwags may be cut out during shunting operations.

December 4, 1933.

Commissioners Norris and Stoneman concurred.

ORDER No. 50627

In the matter of the joint application of the Michigan Central Railroad Company (New York Central Railroad Company lessee) and the Pere Marquette Railway Company, hereinafter called the "Applicant Companies," under Sections 51 and 257 of the Railway Act, for a review of Orders Nos. 6424 and 33642, dated respectively February 25, 1909, and May 8, 1923; and, further, for an Order authorizing the Applicant Companies to remove the gates installed at the crossing of Main Street, Dutton, Ontario, under the said Orders, and to substitute automatic bells and wigwags in their stead; and/or, in the event of the Board ordering that gates be retained as the form of protection at the said crossing, that the village of Dutton and the Township of Dunwich be ordered to pay the difference in the cost of operation and maintenance of the said automatic bells and wigwag signals and the more expensive crossing gates protection.

Case No. 4576

FRIDAY, the 15th day of December, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*
Hon. T. C. NORRIS, *Commissioner.*
J. A. STONEMAN, *Commissioner.*

Upon hearing the application at the sittings of the Board held at St. Thomas, October 11, 1933, in the presence of counsel for the applicant companies, the village of Dutton, and the township of Dunwich, and what was alleged,—

It is ordered:

1. That leave be, and it is hereby, granted the applicant companies to install, in lieu of the gates required to be maintained by the said Orders Nos. 6424 and 33642, double bells and wigwags on both railways at the crossing of Main street, Dutton, Ontario, in accordance with the Standard Specifications for Highway Crossing Signals approved under General Order No. 468; detail plans showing the layout thereof to be submitted for the approval of an engineer of the Board.

2. That the Michigan Central Railroad Company remove the shrubs along the right of way fence and cut away the lower branches of the trees on the piece of land marked "Park," in the northeast angle of the crossing, shown on the plan dated May 30, 1933, on file with the Board under Case No. 4576.

3. That any shunting movements over the said crossing be flagged by one of the trainmen.

4. That the installation on the Michigan Central Railroad be so arranged that the bells and wigwags may be cut out during shunting operations.

5. That the cost of installing and maintaining the said bells and wigwags on each railway be borne and paid by the applicant companies respectively.

C. P. FULLERTON,
Chief Commissioner.

Application of the Michigan Central R.R. Co. (New York Central R.R. Co. lessee), under Sections 51 and 257 of the Railway Act for a reconsideration of Order No. 33621, dated May 2, 1923; and, further, for authority to remove the crossing gates at Graham Street, West Lorne, installed under the said Order, and to substitute automatic bells and wigwags in their stead; and/or, in the event of the gates being retained, that the Municipalities of the Village of West Lorne and the Township of Aldborough be ordered to pay the difference in the cost of operation and maintenance of the said wigwag signals and the more expensive crossing gate protection.

File No. 9415.

JUDGMENT

McLean, Assistant Chief Commissioner:

This application includes the Michigan Central Railroad Company and the Pere Marquette Railway Company. Copy of the application was served on the municipalities on April 13, 1933, and forwarded to Mr. J. S. Robertson, clerk of the village of West Lorne, and Mr. J. A. McRae, clerk of the township of Aldborough. The same counsel appeared as in the other applications, Mr. J. S. Robertson also appearing for the village of West Lorne.

On May 27, 1933, Mr. Robertson forwarded a submission for West Lorne which emphasized the traffic of school children going back and forth over the tracks, and saying that it would be dangerous to change the condition which had existed for such a long time through the use of gates.

Graham street, West Lorne, is in the heart of the village, and is intersected at right angles by three sets of tracks of the M.C.R.R. and one set of tracks of the Pere Marquette Railway, the latter being about 95 feet to the south. Provincial Highway No. 3 is approximately 3½ miles to the south of the village of West Lorne, and runs directly east and west. Provincial Highway No. 2 is 9 miles to the north, also running in a direction parallel to the railway.

Exhibit 5 covers the traffic for the period from December 21, 1932, to January 19, 1933, and shows a daily average of 36 trains, 289 vehicles, and 608 pedestrians. The hours during which the gates are operated are from 6 a.m. until 10 p.m. daily, except Saturday, when they are operated until 12 p.m.

Exhibit 6, under similar conditions as to hours of operation, for the period from June 17, 1933, to June 30, 1933, shows a daily average of 34 trains, 423 vehicles, and 759 pedestrians.

In addition to the written submission, Mr. Robertson, counsel for the village of West Lorne, called Mr. Petherick, reeve of West Lorne. The latter gave evidence with regard to the children crossing the tracks going to and from school. He referred also to the switching track at Graham Street crossing.

He said this was a source of danger. The following statement was made by him at p. 1286, Vol. 608, of the Evidence, in answer to a question by Mr. Robertson:—

> "Q. Is there a switching track?—A. That is just at the Graham Street crossing, on the Michigan Central. Right up close on the north side there is one switch, and on the south side of track No. 2, the eastbound track, about 10 to 12 rods east of the crossing, there is another switch. Down on the Pere Marquette, right close to the Pere Marquette crossing, there is another switch. These trains come up and make what the railwaymen call a drop, but we laymen call it a kick. They will come up there to get rid of a car; they go up beyond the crossing and the engine and crew are west of the crossing. They cut off the engine and then scamper back out of the way. This happens every time in the morning between 8 and 9 o'clock, if the train is on time. If the school children come along at that time they walk right into a car. That is the worst trap of the whole thing."

Approaching the M.C.R.R. tracks from the north the view of trains from the west is obstructed by trees on railway property until one is 30 feet from the eastbound track. Trains from the east can be seen when one is 33 feet from the westbound track. When there are cars on the siding the view is restricted to about 11 feet. As the cars on the siding would be about 350 feet from the crossing, the view referred to is restricted to 11 feet only when trains are east of the standing cars. Going on south the view of trains from both directions on the Pere Marquette Railway is good. Approaching the Pere Marquette tracks from the south there is a very good view of trains from both directions, and the same may be said of the M.C.R.R. tracks as one goes on north. In the northwest angle of the M.C.R.R. crossing there are a number of trees on the railway company's property, and the view in this angle can easily be cleared up by removing the trees. In the northeast angle the view can be cleared up and an easement for sight lines established, so that one can see a train 550 feet away when one is 70 feet from the crossing.

I think that order may go authorizing the removal of the gates and the substitution of double bells and wigwags on both railways. the cost of installation and maintenance to be on the railway company in each case. All shunting movements over the crossing to be flagged by one of the trainmen, and the installation to be so arranged on the M.C.R.R. that the bells and wigwags can be cut out during such operations. The M.C.R.R. should remove the trees obstructing the view on its property in the northwest angle of the crossing and establish a sight line in the northeast angle of the crossing, so that a train will be visible 700 feet away when one is 75 feet from the track. Detail plans showing the layout to be submitted for the approval of an engineer of the Board.

December 4, 1933.

Commissioners Norris and Stoneman concurred.

ORDER No. 50624

In the matter of the joint application of the Michigan Central Railroad Company (New York Central Railroad Company lessee) and the Pere Marquette Railway Company, hereinafter called the "Applicant Companies," under Sections 51 and 257 of the Railway Act, for reconsideration of Order No. 33621, dated May 2, 1923; and, further, for authority to remove the gates at the crossing of Graham Street, West Lorne, Ontario, installed under the said Order, and to substitute automatic bells and wigwags in their stead; and/or, in the event of the gates being retained, that the Village of West Lorne and the Township of Aldborough be ordered to pay the difference in the cost of operation and maintenance of the said wigwag signals and the more expensive crossing gate protection.

File No. 9415

FRIDAY, the 15th day of December, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*
Hon. T. C. NORRIS, *Commissioner.*
J. A. STONEMAN, *Commissioner.*

Upon hearing the application at the sittings of the Board held at St. Thomas, October 11, 1933, in the presence of counsel for the applicant companies, the township of Aldborough, and the village of West Lorne, and what was alleged,—

It is ordered:

1. That leave be, and it is hereby, granted the applicant companies to install, in lieu of the gates required to be maintained by the said Order No. 33621, double bells and wigwags on both railways at the crossing of Graham street, in the village of West Lorne and province of Ontario, in accordance with the Standard Specifications for Highway Crossing Signals, approved under General Order No. 468; detail plans showing the layout thereof to be submitted for the approval of an engineer of the Board.

2. That the Michigan Central Railroad Company remove the trees obstructing the view in the northwest angle of the crossing, and establish a sight line in the northeast angle, so that a train will be visible 700 feet away when one is 75 feet from the track.

3. That any shunting movements over the said crossing be flagged by one of the trainmen.

4. That the installation on the Michigan Central Railroad be so arranged that the bells and wigwags may be cut out during shunting operations.

5. That the cost of installing and maintaining the said bells and wigwags on each railway be borne and paid by the applicant companies respectively.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 50602

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.12

FRIDAY, the 8th day of December, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
G. A. STONE, *Commissioner.*

The Board orders:

1. That the tolls published in section 3 of Supplement No. 23 to Tariff C.R.C. No. E-4322, filed by the Canadian Pacific Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said section 3 of Supplement No. 23 to Tariff C.R.C. No. E-4322 approved herein, are as follows:—

Canadian Pacific Railway From	Rates in cents per 100 pounds Local	Rates in cents per 100 pounds Furtherance
Fairville, N.B. South Bay, N.B.	6	3½
Grand Bay, N.B.	6½	3½
Westfield Beach, N.B. to Blagdon, N.B.	7½	4½
Welsford, N.B. Clarendon, N.B.	9	4½
Wirral, N.B. to Hoyt, N.B.	9½	5½
Bailey, N.B. to Tracy, N.B.	9½	6
Vespra, N.B. to Cork, N.B.	10½	6½
Harvey, N.B.	11	7½
Prince William, N.B. Magaguadavic, N.B.	12	8
McAdam, N.B.	12½	8
Bay Shore, N.B.	6	3½
Rusagonis, N.B. Waasis, N.B.	10½	6½
Doak, N.B. to Fredericton, N.B.	11	7½
Barber Dam, N.B. Lawrence, N.B.	12½	8
Watt, N.B.	12	8
Honeydale, N.B. to Milltown, N.B.	12½	8
Dumbarton, N.B. to Hewitt, N.B.	12	8

Canadian Pacific Raiway From	Rates in cents per 100 pounds Local	Furtherance
Brunswick, N.B.	11	7½
Roix Road, N.B. to Dougherty, N.B.	12	8
Chamcook, N.B. to St. Andrews, N.B.	12½	8
Oak Bay, N.B. Ripleys, N.B.	12	8
Gidden, N.B. to Dyers, N.B.	11	7½
Bonney River, N.B.	10½	6½
St. George, N.B. to Sherwood Siding, N.B.	9½	6
Pennfield, N.B.	9½	5½
New River, N.B. Lepreáux, N.B.	9	4½
Musquash, N.B. Taylor's, N.B.	7½	4½
Allan Cot, N.B. Spruce Lake, N.B.	6½	3½
Cottrell, N.B. Sugar Brook, N.B.	13½	9
Deer Lake, N.B. to Debec, N.B.	14	9½
Woodstock, N.B. to Florenceville, N.B.	14½	10½
Bristol, N.B. to Andover, N.B.	15½	11
Aroostook, N.B. to Andre Siding, N.B.	16½	12
Martin, N.B. to Green River, N.B.	17	12½
St. Basil, N.B. Edmundston, N.B.	17½	13½
Elmwood, N.B. to McKenna, N.B.	14½	10½
Shewan, N.B. to Cahill, N.B.	14	9½
Barton, N.B. to Stoneridge, N.B.	13½	9
Zeland, N.B. to Keswick, N.B.	12½	8
Clanfield, N.B. Nashwaaksis, N.B.	12	8

Canadian Pacific Railway From	Rates in cents per 100 pounds Local	 Furtherance
North Devon, N.B. South Devon, N.B.	11	7½
Caverhill, N.B. to Otis, N.B.	14	9½
Tobique Narrows, N.B. to Tinker, N.B.	16½	12
Fredericton & Grand Lake Coal and Railway		
From		
Marysville Jct., N.B.	11	7½
Barker, N.B. Scott, N.B.	12	8
Glennie, N.B.	12½	8
Lakorn, N.B. to Scale, N.B.	13½	9
Minto, N.B.	14	9½
Marysville, N.B.	12	8
New Brunswick Coal and Railway		
From		
Newcastle Bridge, N.B. to Cumberland Bay, N.B.	14	9½
Young's Cove Road, N.B. to Scotch Settlement, N.B.	14½	10½
Belleisle, N.B.	14	11
Norton, N.B.	9½	5½

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 50603

In the matter of the application of the Canadian National Railways, hereinafter called the "Applicants," for permission to cancel certain rates on sugar from Halifax and Dartmouth, Nova Scotia, and Saint John, New Brunswick, upon less than statutory notice.

File No. 27612.86

Saturday, the 9th day of December, A.D. 1933.

Hon. C. P. Fullerton, K.C., *Chief Commissioner.*
G. A. Stone, *Commissioner.*

Upon its appearing that the said rates were issued to meet water competition, and that such competition except to Bridgewater, Nova Scotia, does not now exist,—

It is ordered: That the applicants be, and they are hereby, permitted to cancel, upon three days' notice, rates on sugar now published in item 280-A of Supplement No. 20 to Tariff C.R.C. No. E-1984, with the exception of rates to Bridgewater, Nova Scotia.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 50604

In the matter of the application of the Pere Marquette Railway Company, hereinafter called the "Applicant Company," for permission to cancel certain rates on automobiles from Walkerville, Ontario, to Montreal, Quebec, upon less than statutory notice.

File No. 27612.88

SATURDAY, the 9th day of December, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
G. A. STONE, *Commissioner.*

Upon its appearing that the said rates were issued to meet water competition, and that such competition no longer exists,—

It is ordered: That the applicant company be, and it is hereby, permitted to cancel, upon three days' notice, rates on automobiles from Walkerville, Ontario, to Montreal, Quebec, now published in item 20 of Tariff C.R.C. No. 2870.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 50609

In the matter of the application of the Canadian Pacific Railway Company, hereinafter called the "Applicant Company," for permission to cancel on less than statutory notice the rates to Beeton, Ontario, including collection and delivery service, now published in Tariff C.R.C. No. E-4662.

File No. 27612.87

SATURDAY, the 9th day of December, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

Upon its appearing that the applicant company is unable to arrange collection and delivery service at Beeton, Ontario, in connection with rates now published in the said Tariff C.R.C. No. E-4662; and upon the report and recommendation of the Assistant Chief Traffic Officer of the Board,—

It is ordered: That the applicant company be, and it is hereby, permitted to cancel, upon three days' notice, the rates, including collection and delivery service, at Beeton, Ontario.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 50608

In the matter of the application of A. P. Hecker, Agent, Richmond, Virginia, for permission to file on less than statutory notice a special tariff of rates, including pick-up and delivery service.

File No. 27612.89

TUESDAY, the 12th day of December, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

Upon its appearing that the Interstate Commerce Commission has, by its Special Permission No. 131480, of November 28, 1933, authorized the filing of the said tariff upon one day's notice,—

It is ordered: That the said A. P. Hecker be, and he is hereby, authorized to file, upon one day's notice, a special tariff on behalf of the Pere Marquette Railway Company and other railway companies in the United States, including pick-up and delivery service.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 50612

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act; and Order No. 50014, dated June 21, 1933, approving the tolls published in items 140, 150, 260, 380, 1330, and 1370 of Tariff C.R.C. No. E-4632, filed by the Canadian Pacific Railway Company.

File No. 34822.12

TUESDAY, the 12th day of December, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

Upon its appearing that the wrong basis was used in determining the normal tolls to apply on traffic moving to Sorel, Quebec, under item 1370 of the said Tariff C.R.C. No. E-4632,—

It is ordered: That the said Order No. 50014, dated June 21, 1933, be, and it is hereby, amended by striking out the figures "27½" and "23" opposite Sorel, Quebec, under the columns for 60,000 pounds and 80,000 pounds respectively, and substituting therefor the figures "29" and "24½" respectively.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 50615

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.2

WEDNESDAY, the 13th day of December, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

The Board orders: That the tolls published in the following tariffs filed by the Canadian National Railways under section 3 of the Maritime Freight Rates Act be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act, namely:—

Supplement 40 to Tariff C.R.C. No. E-1234.
Supplement 41 to Tariff C.R.C. No. E-1234.
Supplement 64 to Tariff C.R.C. No. E-1240.
Supplement 46 to Tariff C.R.C. No. E-1244.
Supplement 25 to Tariff C.R.C. No. E-1504.
Supplement 13 to Tariff C.R.C. No. E-1829.
Supplement 6 to Tariff C.R.C. No. E-1906.
Supplement 1 to Tariff C.R.C. No. E-1920.
Supplement 6 to Tariff C.R.C. No. E-2085.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 50616

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.12

WEDNESDAY, the 13th day of December, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the toll published to Cap de la Madeleine and Trois Rivières, Quebec, in Supplement No. 9 to Tariff C.R.C. No. E-4304, filed by the Canadian Pacific Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said Supplement No. 9 to Tariff C.R.C. No. E-4304 approved herein, is 28 cents per 100 pounds.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 50617

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13

WEDNESDAY, the 13th day of December, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the tolls published in Tariff C.R.C. No. 904, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said Tariff C.R.C. No. 904 approved herein, are as follows:—

From	Rates in cents per 100 pounds
Lawrencetown, N.S.	21½
Middleton, N.S.	20
Kingston, N.S.	19
Aylesford, N.S.	18
Berwick, N.S.	17½
Waterville, N.S.	17
Coldbrook, N.S.	16½
Kentville, N.S.	15½
Port Williams, N.S.	14
Wolfville, N.S.	12½
Windsor, N.S.	12½
Centreville, N.S.	16½
Canning, N.S.	17
Kingsport, N.S.	17½
Lakeville, N.S.	17
Grafton, N.S.	17½
Weston, N.S.	18

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 50618

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13

THURSDAY, the 14th day of December, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the toll published in Tariff C.R.C. No. 902 filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act be, and it is hereby, approved, subject to the provisions of subsection 3 of the said section.

2. And the Board hereby certifies that the normal toll for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said Tariff C.R.C. No. 902 approved herein, is 24 cents per 100 pounds; 1½ cents per 100 pounds to be deducted on account of water movement.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 50619

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.13

THURSDAY, the 14th day of December, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

The Board orders:

1. That the toll published in Tariff C.R.C. No. 903, filed by the Dominion Atlantic Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said Tariff C.R.C. No. 903 approved herein, is $2.16½ per 100 pounds; 1½ cents per 100 pounds to be deducted on account of water movement.

C. P. FULLERTON,
Chief Commissioner.

ORDER No. 50635

In the matter of the application of the Detroit and Windsor Subway Company and the Detroit and Canada Tunnel Company, hereinafter called the "Applicant Companies," for approval of Tariff C.R.C. No. 18 and Supplement No. 1 thereto, covering tolls to be charged in respect of the Detroit Tunnel, on file with the Board under file No. 35943.5.

TUESDAY, the 19th day of December, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*

Upon the report and recommendation of the Assistant Chief Traffic Officer of the Board,—

It is ordered: That the applicant companies' said Tariff C.R.C. No. 18 and Supplement No. 1 thereto, covering tolls to be charged in respect of the Detroit Tunnel, on file with the Board under file No. 35943.5, be, and they are hereby, approved.

C. P. FULLERTON,
Chief Commissioner.

GENERAL ORDER No. 523

In the matter of the General Order of the Board No. 512, dated April 4, 1933, as amended by General Order No. 518, dated October 10, 1933, made upon the application of Shipping Containers, Limited, of Montreal, Quebec, granting leave to use, for shipping over railways in Canada, certain shipping containers prescribed in Interstate Commerce Commission regulations for the transportation of explosives and other dangerous articles by freight, filed by B. W. Dunn, Agent, under C.R.C. No. 2.

File No. 1717.35

THURSDAY, the 7th day of December, A.D. 1933.

Hon. C. P. FULLERTON, K.C., *Chief Commissioner.*
S. J. MCLEAN, *Assistant Chief Commissioner.*
Hon. T. C. NORRIS, *Commissioner.*
J. A. STONEMAN, *Commissioner.*

Upon the report and recommendation of the Assistant Chief Traffic Officer of the Board,—

It is ordered: That the said General Order No. 512, dated April 4, 1933, be, and it is hereby, further amended by adding the words, "for the carriage of matches," after the word "construction" in paragraph 2 of the order.

C. P. FULLERTON,
Chief Commissioner,

ACCIDENTS REPORTED TO THE OPERATING DEPARTMENT, BOARD OF RAILWAY COMMISSIONERS, FOR MONTH OF OCTOBER, 1933

Railway accidents	186, with	13 killed and	182 injured
Railway accidents at highway crossings	26, with	6 killed and	35 injured
	212	19	217

	Killed	Injured
Passengers	..	18
Employees	2	149
Others	17	50
	19	217

DETAILS OF ACCIDENTS AT HIGHWAY CROSSINGS

No. of accidents	
	Prince Edward Island
1	Automobile—Auto driver failed to stop for crossing. Licence PEI. 2-707.
	Nova Scotia
1	Automobile—Auto driver failed to take precautions, and to observe Stop signal. Licence N.S. 88025.
1	Auto truck—Foggy weather, and poor lines of vision. Licence N.S. 12-451.
	Quebec
3	Automobile—Auto driver failed to stop for crossing. Licenses, Que. 62901; Que. 64889; N.Y. Y-53-26.
3	Auto truck—Truck driver failed to stop for crossing. Licences, Que. F-11216; F-9701; F-754.
	Ontario
3	Automobile—Auto driver failed to observe approaching train. Licences, Ont. 2802-C; CH-706; N-7343.
1	Automobile—Auto ran into side of train. Licence Ont. AE-227.
1	Automobile—Auto driver attempted to beat train. Licence Ont. FJ-471.
1	Automobile—Auto driver failed to hear or see train, or to heed crossing bell. Licence Ont. V-325.
1	Automobile—Auto driver claims he did not hear bell, nor see wig-wag. Licence Ont. B-4959.
1	Automobile—Auto driver mistook Brakeman's signal to Engineer. Licence Ont. W-8981.
1	Automobile—Licence Ont. U-1134.
1	Auto and trailer—Auto driver failed to see cars, and stopped on crossing. Licence Sask. 65988.
1	Pedestrain—Boy standing on crossing, failed to notice approaching train.
	Saskatchewan
1	Automobile—Auto driver failed to hear signal, poor visibility caused by storm. Licence Sask. 35347.
	Alberta
1	Automobile—Auto ran into side of train. Licence Alberta 35-312.
1	Automobile—Auto driver saw train and failed to take precautions. Licence Alta. 11216.
1	Automobile—Licence Alta. 47-007.
1	Auto truck—Truck driver failed to see or hear train. Licence Alta. 15548.
	British Columbia
1	Automobile—Excessive speed of automobile. Licence B.C. 31505.

Of the twenty-six accidents at highway crossings, twenty-three occurred at unprotected crossings, and three at protected crossings. Seventeen of the accidents occurred during daylight hours and nine at night.

Ottawa, December 19, 1933.

The Board of

Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

Vol. XXIII | Ottawa, January 15, 1934 | No. 22

This publication is issued fortnightly, on the 1st and 15th of each month. Annual subscription, $3.00; single numbers, 20 cents; in quantities, 25 per cent discount. Remittances should be made to the King's Printer, Ottawa, by postal money order, express order or accepted cheque. The use of currency for this purpose is contrary to the advice of the postal authorities and entails a measure of risk. Postage stamps, foreign money or uncertified cheques will not be accepted. No extra charge is made for postage on documents forwarded to points in Canada and in the United States, but cost of postage is added to the selling price when documents are mailed to other countries. Early application should be made for copies in quantities. Subscriptions should be sent, in every case, to the King's Printer, Ottawa.

ORDER No. 50691

In the matter of the application of A. P. Hecker, Agent for and on behalf of the Pere Marquette Railway Company and other railway companies, for permission to file, upon less than statutory notice, a supplement to Tariff C.R.C. No. 31, for the purpose of clarifying rules and to correct errors.

File No. 27612.89

MONDAY, the 8th day of January, A.D. 1934.

S. J. MCLEAN, *Assistant Chief Commissioner.*
G. A. STONE, *Commissioner.*

Upon its appearing that it is desirable that the clarification of rules and correction of errors be made effective as soon as possible,—

The Board orders: That the said Agent A. P. Hecker be, and he is hereby, permitted to file upon one day's notice a supplement to his Tariff C.R.C. No. 31, providing for the necessary changes therein.

S. J. MCLEAN,
Assistant Chief Commissioner.

ORDER No. 50695

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.12

TUESDAY, the 9th day of January, A.D. 1934.

S. J. MCLEAN, *Assistant Chief Commissioner.*
G. A. STONE, *Commissioner.*

The Board orders:

1. That the toll published in item 27 of Supplement No. 55 to Tariff C.R.C. No. E-4312, filed by the Canadian Pacific Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 3 of section 3.

2. And the Board hereby certifies that the normal toll for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said item 27 of Supplement No. 55 to Tariff C.R.C. No. E-4312 approved herein, is 59½ cents per 100 pounds; 1½ cents per 100 pounds to be deducted account of water haul.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 50696

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.12

TUESDAY, the 9th day of January, A.D. 1934.

S. J. McLEAN, *Assistant Chief Commissioner.*
G. A. STONE, *Commissioner.*

The Board orders:

1. That the toll published in item 135 of Supplement No. 56 to Tariff C.R.C. No. E-4312, filed by the Canadian Pacific Railway Company under section 9 of the Maritime Freight Rates Act, be, and it is hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal toll for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said item 135 of Supplement No. 56 to Tariff C.R.C. No. E-4312 approved herein, is 44½ cents per 100 pounds.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 50700

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.2

WEDNESDAY, the 10th day of January, A.D. 1934.

S. J. McLEAN, *Assistant Chief Commissioner.*
G. A. STONE, *Commissioner.*

The Board orders: That the tolls published in the following tariffs filed by the Canadian National Railways under section 3 of the Maritime Freight Rates Act be, and they are hereby, approved, subject to the provisions of subsection 3 of the said section 3, namely:—

Supplement No. 74 to Tariff C.R.C. No. E-1235.
Supplement No. 65 to Tariff C.R.C. No. E-1240.
Supplement No. 46 to Tariff C.R.C. No. E-1244.
Supplement No. 27 to Tariff C.R.C. No. E-1247.
Supplement No. 8 to Tariff C.R.C. No. E-1835.
Supplement No. 9 to Tariff C.R.C. No. E-1911.
Supplement No. 2 to Tariff C.R.C. No. E-2070.
Tariff C.R.C. No. E-2097.

S. J. McLEAN,
Assistant Chief Commissioner.

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The Board of

Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

Vol. XXIII Ottawa, February 1, 1934 No. 23

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ORDER No. 50712

In the matter of the application of the Canadian Pacific Railway Company, the Canadian National Telegraphs, and the Canadian Marconi Company, hereinafter called the "Appplicant Companies," for permission to file upon less than statutory notice revised rates for shore-to-ship code messages.

File No. 27612.90

MONDAY, the 22nd day of January, A.D. 1934.

S. J. McLEAN, *Assistant Chief Commissioner.*
G. A. STONE, *Commissioner.*

Upon its appearing that under an arrangement agreed to at the Madrid Conference a change was made in the charge for transatlantic messages in code, effective January 1, 1934, and its being desirable that a similar arrangement be made effective as soon as possible on messages between ship and shore,—

The Board orders: That the applicant companies be, and they are hereby, permitted to file upon three days' notice schedules giving effect to the revised rates for code messages.

S. J. McLEAN,
Assistant Chief Commissioner.

GENERAL ORDER No. 524

In the matter of the General Order of the Board No. 289, dated March 24, 1920, prescribing the rules to be adopted by railway companies subject to the jurisdiction of the Board relative to the inspection of locomotives and tenders.

File No. 21351

THURSDAY, the 18th day of January, A.D. 1934.

S. J. McLEAN, *Assistant Chief Commissioner.*
G. A. STONE, *Commissioner.*

Upon reading the submissions filed on behalf of the Railway Association of Canada, and the report and recommendation of the Chief Operating Officer of the Board,—

It is Ordered: That the said General Order No. 289, dated March 24, 1920, be, and it is hereby, amended by striking out the paragraphs in the rules under the heading of "Lateral Motion" and substituting the following, namely:—

"*Lateral Motion.*—The total lateral motion or play between the hubs of the wheels and the boxes on any pair of wheels shall not exceed the following limits:—

"For engine truck wheels (trucks with swing centres) ..	1	inch
For engine truck wheels (trucks with rigid centres)	1½	inches
For trailing trucks (1 pair of wheels)	1	inch
For trailing trucks (2 pairs of wheels), leading wheels ..	2	inches
trailing wheels ..	1	inch
For driving wheels (more than 1 pair), not more than ..	¾	inch

"These limits may be increased on locomotives operating on track where the curvature exceeds 20 degrees, when it can be shown that conditions require additional lateral motion."

S. J. McLEAN,
Assistant Chief Commissioner.

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DEC 4 1

The Board of

Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

Vol. XXIII | Ottawa, February 15, 1934 | No. 24

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Application of the Municipal Council of the Parish of Notre Dame du Bon Conseil, County of Drummond, P.Q., for an Order of the Board declaring the private crossing at Mitchell in the County of Drummond, a public crossing, on the line of the Canadian National Railways.

File 38625.

Heard at Drummondville, P.Q., November 28th, 1933.

JUDGMENT

COMMISSIONER STONEMAN:

In this case the municipality made application to the Board, in a letter dated February 6, 1933, in terms of the following:—

> "Regular meeting of the Municipal Council of the Parish of Notre Dame du Bon Conseil, County of Drummond, held in the Council Chambers on the 6th day of February, 1933;
>
> "Having learned that the Canadian National Railways crossing at Mitchell is considered by the Board of Railway Commissioners for Canada as a private crossing, and considering that the said crossing at Mitchell has been public for over twenty years, it is proposed by Councillor Alphonse Boisvert, seconded by Georges Lauziere that application be made to the Board of Railway Commissioners to have the crossing so declared and thus be able to obtain the necessary signs for the protection of the public. Adopted.
>
> "True Copy.
>
> "(Sgd.) ELPHEGE RENAUD,
> *Secretary-Treasurer.*"

The railway company's reply sent to the Board—a copy of which is said to have been sent to the municipality—consents to the application, provided all costs in connection with the construction and maintenance of the crossing are borne by the municipality; they also enclose a plan similar to the plan filed at the hearing as Exhibit No. 2 and described as Intercolonial Railway,

District No. 1, Mitchell, dated April 4, 1916, and revised January 31, 1921, showing railway station yards, on which is indicated, by a red cross, the crossing which the municipality desire to have converted into a public crossing. The location of the surveyed roads in the vicinity are also shown, but no public crossing is shown at the point under discussion.

In their reply the municipality object to the cost being placed upon them. An inspection was made by the Board's Engineer, who reported as follows:—

> "I recommend that the applicant municipality be authorized to construct and maintain, at its own expense, a grade level crossing across the tracks of the Canadian National Railways at a point 170 feet west of the station, at Mitchell, and as shown on plan dated January 31, 1921, filed with the Railway Company's answer."

The report of the Division Engineer was forwarded to the municipality, and they replied objecting to an order going on the terms recommended, and the matter was finally brought to a hearing.

At the hearing, the municipality submitted, in evidence, three points in support of their application and subsequent objection to having the cost of construction and maintenance placed on the municipality—

1. There was a road providing a public way of communication prior to the construction of the railway;
2. The railway have maintained this crossing at their expense for at least twenty years;
3. The crossing has been used by the public for a great number of years.

Mr. Marier, solicitor for the applicant, also filed a plan described as Official Plan of part of the Township of Wendover, County of Nicolet, dated Arthabaskaville, February 11, 1893, and deposited in the Department of Lands and Forests for the province of Quebec on March 1, 1893, showing the ranges, lots, parishes and lot lines of the township, and the location of the railway. The plan also shows an enlargement of the village, showing public highways, railways and sub-divisions, but no public crossing of the railway at the point in question.

The railway admits that it has maintained this crossing for a great many years and that the public have used it, but contends it is senior at the point and filed plans described as Exhibits Nos. 2 and 6 in support of its contention. Exhibit No. 2; plan of the Intercolonial Railway, District No. 1, Mitchell, dated April 4, 1916, and revised January 31, 1921, of railway station yards, shows public roads, but none at the point where application is made for a crossing. Exhibit No. 6; plan of Drummond County Railway, dated Drummondville, August 4, 1888, shows the location from station 490 to the southwest branch of the Nicolet river. This is the plan deposited in accordance with the requirements of the Department of Public Works, Quebec, on August 14, 1888, in conformity with section 8 of the Revised Railway Act of Quebec, 1880. It shows the existing highways, lots, lines and property owners of the railway location, but no highway is shown at the point in question.

The railway was originally constructed by the Drummond County Railway, a provincial incorporation, in 1887 or 1888. Its location plan filed in pursuance of the provisions of the Quebec Consolidated Act of 1880, shows the location of public highways crossing the railway, but not a public highway crossing at the point in question.

None of the plans filed as Exhibits, i.e., Exhibits Nos. 2, 3, and 6, show a highway crossing at this point at the time the railway was constructed, nor was their any statutory reservation for road allowance, the effect of which would be to establish senior highway rights at the point of crossing.

In this case the necessity for a public crossing at the point in question is admitted, and the only question for determination is, who should maintain it. This depends solely on the question of seniority, and the question of seniority depends on whether there was a public highway crossing, or reservation for such crossing, at the point in question when the raliway was constructed. There is nothing produced by the applicant municipality in this case that could not be produced by parties making similar applications at numerous points on railway lines under the Board's jurisdiction. User of private crossings by the public for a number of years does not establish a highway. The approval of the Board is necessary.

Town of Ford City v. G.T.R., 28 Can. Ry. Cases, 1.

The following cases may be referred to as showing the practice with regard to the application of the junior and senior rule where private crossings, on the application of the municipality, are being converted into public crossings:—

Village of Weston v. C.P. and G.T.R. Cos. (Denison Avenue Crossing Case) 7 Can. Ry. Cases, 79;
Town of St. Pierre v. G.T.R. Co. (Simplex Ave. Crossing Case) 13 Can. Ry. Cases 1;
City of Montreal v. C.P.R. Co., 18 Can. Ry. Cases 50;
City of Lachine v. G.T.R., 18 Can. Ry. Cases 385.

Order should go granting the application.

There having been no public highway or reservation for a public highway at the point in controversy at the time the railway was constructed there should, in my view, be no departure in this case from the application of the junior and senior rule. The municipality being junior, the cost therefore, of construction and maintenance will be upon it.

OTTAWA, January 16, 1934.

Commissioner Stone concurred.

Deputy Chief Commissioner Garceau dissenting.

Application of the Municipal Council of the Parish of Notre-Dame du Bon Conseil, County of Drummond, P.Q., for an Order of the Board declaring the private crossing at Mitchell, in the County of Drummond, P.Q., a public crossing; on the line of the Canadian National Railways.

File No. 38625

JUDGMENT

GARCEAU, *Deputy Chief Commissioner.*

This case was heard at Drummondville, on November 28, 1933.

On February 6, 1933, the Board received the following application:—

"Having learnt that the Canadian National Railways crossing at Mitchell is considered by the Board of Railway Commissioners for Canada as a private crossing, and considering that the said crossing at Mitchell has been public for over twenty years, it is proposed by Councillor Alphonse Boisvert, seconded by Georges Lauziere, that application be made to the Board of Railway Commissioners to have the crossing so declared and thus be able to obtain the necessary signs for the protection of the public."

The railway, by its submission of March 10, 1933, had no objection to the demand, but asked that the cost of maintenance of this highway crossing be borne by the applicant; the applicant objected.

The material facts in this case are not controverted except concerning the seniority of the highway or of the railway. I will deal later with this question of seniority.

The plans, Exhibit No. 2 and the one filed by the railway with its submission of March 10, 1933, show the location of the highway across the railway tracks. The dotted lines crossing the tracks between which can be read the word "roadway" indicate the location of the highway since at least 1898 up to this date.

This highway across the railway was used by the public as a highway according to the definition of the Railway Act, since at least 1898 up to May, 1932, without any protest from the railway; on the contrary, the railway always maintained and upkept that level crossing and at some time even equipped it with warning signs, cattle guards and return fences, and always kept it in proper repair. These facts, as I said before, are not controverted.

To decide which party shall bear the maintenance of this highway crossing, it is necessary to expose the history of the railway.

It was first the Drummond County Railway, incorporated in 1886 by the Quebec Statutes, chapter 81, under the provisions of the Quebec Railway Act of 1880, chapter 43.

By the Statute 62-63 Victoria, chapter 6, assented to on August 11, 1899, the Governor in Council was authorized to purchase from the Drummond County Railway Company and the latter was authorized to sell and convey to Her Majesty the whole of the railway and undertaking of the company, including its main and branch lines of railway and all buildings.

On November 4, 1899, an Order in Council was passed, pursuant to the above cited Statute, recommending the purchase of the Drummond County Railway.

By deed in private writing, on November 7, 1899, the Drummond County Railway Company sold to Her Majesty the whole of its undertaking and railway.

The Drummond County Railway has since then been the property of the Dominion of Canada and has formed part of the Intercolonial Railway.

By the Statute 9-10 George V, chapter 13, assented to on June 6, 1919, the Canadian National Railways Company came into existence. This statute is now chapter 172 of the Revised Statutes of Canada 1927.

On January 20, 1923, the Governor in Council entrusted to the Canadian National Railways Company the management and operation of, among other lines, the Intercolonial Railway—Order in Council P. 115.

As above stated, this railway has been operated first, under the authority of the provincial statutes and, since November 7, 1899, under the authority of the federal statutes.

The Quebec Railway Act of 1880 enacts in section 48, chapter 43, that the railways shall keep in good state of repair all highway crossings. This disposition reads as follows:—

> "Whenever any level crossing on any railway shall be out of repair, the chief officer of the Municipality or other local division having jurisdiction over the highway so crossed, may serve a notice upon the company in the usual manner, requiring the repairs to be forthwith made.... may make such repairs and may recover all costs, expenses and outlays in the premises by action against the company in any court of competent jurisdiction as money paid to the company's use."

The Government Railways Act of 1886 which governed the Intercolonial Railway when it took possession of the Drummond County Railway had also similar dispositions as to the obligation of the railway for the maintenance of the highway crossing—Sections 16 and 19 of chapter 38, read as follows:—

"16. Within six months after any lands have been taken for the use of the railway, the Minister ..... shall erect and maintain on each side of the railway, fences, ... and also cattle guards at *all public road crossings,* suitable and sufficient to prevent cattle and animals from getting on the railway."

"19. At *every road* and farm crossing on the grade of the railway, the crossing shall be sufficiently fenced on both sides so as to allow of the safe passage of trains."

The Government Railways Act of 1906 has similar dispositions also, in sections 21, 22 ss. 2, 24 and 25:—

"21. Signboards stretching across or projecting over the highway crossed at a level by any railway, shall be erected and kept up at each crossing at such height as to leave sixteen feet from the highway to the lower edge of the sign-board."

"22. SS. 2. The minister shall also, within the time aforesaid, (within six months) *construct* and thereafter *maintain cattle-guards* at all *public road crossings,* suitable and sufficient to prevent cattle and animals from getting on the railway."

"24. After the fences or guards have been duly made, and while they are maintained, no such liability shall accrue for any such damages, unless negligently or wilfully caused."

"25. At every road and farm crossing on the grade of the railway, the crossing shall be sufficiently fenced on both sides so as to allow of the safe passage of trains."

We can conclude that up to January, 1923, when the Intercolonial was handed to the administration of the Canadian National Railways, the railway was legally bound to keep that highway crossing at Mitchell in good state of repairs, and is still bound, unless exempted by a statute since then, Railway Act 1919, section 3.

In 1907, the railway was diverted from its former direction at Mitchell Station, east of the highway crossing, and the old roadbed of the railway was turned into a public highway called "roadway" on the plan Exhibit No. 2, the highway crossing being the connecting link between the pre-existing highway on the north side of the track and the new highway or roadway, as aforesaid, on the old roadbed of the railway.

In 1911, the applicant under proper authority passed a procès-verbal which was filed as Exhibit No. 5, reading in part as follows:—

".... The crossing on the Intercolonial Railway having always been maintained by that company will continue to be at the charge of the railway, as in the past."

Sections 20, 21 and 22 of the Municipal Code of Quebec, read as follows:—

"20. Every railway company is obliged to construct and maintain fences, *roads,* bridges, ditches and water-courses on the properties possessed or occupied by it in a municipality, and is subject like any other ratepayer to the provisions of the by-laws, *procès-verbaux* or other municipal enactments passed to that effect, even if such work upon fences, *roads,* bridges, ditches and water-courses should not be of advantage to the company."

"21. Should such company neglect or refuse to perform the work for which it is liable under article 20; within the prescribed delay, it shall be liable for the damages occasioned by its neglect or refusal, and to a fine of twenty dollars for each day that such neglect or refusal continues."

"22. The provisions of articles 20 and 21 apply also *to Federal* and Provincial Government railways, whether such railways are operated by the government or by private parties."

These dispositions are within the authority of the province and are binding on the railway.

The procès-verbal referred to has not been abrogated by the applicant.

Has the Board, under the Railway Act of 1919, the authority to relieve the railway of these legal obligations? I respectfully submit that, even the dispositions of the Railway Act bind the Board to give effect to the laws relating to highways of the land through which the railway is passing.

I have given much attention and study to this question, for it is a leading case, and a great number of highway crossings located along the line of the old Intercolonial Railway would be affected, if the contrary contention were upheld, and the public would be obliged to the maintenance of these crossings, when the highway could not prove its seniority, even though they are at present being maintained by the railway.

Moreover, such a decision would be to the effect that the Quebec laws—Section 6 of the Civil Code and sections 20, 21 and 22 of the Municipal Code—are void, ultra vires of the authority of the province.

I submit that, even if this were true, the Board has no authority to decide on the validity of those laws and is bound to act in its decisions according to the dispositions of these laws.

When reading section 33 of the Railway Act, the words "special act" must comprehend the dispositions of the Quebec Statute of 1880, section 48 of Chapter 43, and sections 20, 21 and 22 of the Quebec Municipal Code, and the Government Railways Acts of 1886 and 1906. Section 33 of the Railway Act reads as follows:—

> "33. (1) The Board shall have full jurisdiction to inquire into, hear and determine any application by or on behalf of any party interested—
>
> "(*a*) complaining that any company, or person, has failed to do any act, matter or thing required to be done by this Act, or the *Special Act*, or by any regulation, order or direction made thereunder by the Governor in Council, the Minister, the Board, or any inspecting engineer or other lawful authority, or that any company or person has done or is doing any act, matter or thing contrary to or in violation of this Act, or the *Special Act*, or any such regulation, order or direction; or
>
> (*b*) requesting the Board to make any order, or give any direction, leave, sanction or approval, which by law it is authorized to make or give, or with respect to any matter, act or thing which by this Act, or the *Special Act*, is prohibited, sanctioned or required to be done.
>
> "(2) The Board may order and require any company or person to do forthwith, or within or at any specified time, and in any manner prescribed by the Board, so far as it is not inconsistent with this Act, any act, matter or thing which such company or person is or may be required to do under this Act, or the *Special Act* and may forbid the doing or continuing of any act, matter or thing which is contrary to this Act, or the *Special Act;* and shall for the purposes of this Act have full jurisdiction to hear and determine all matters whether of law or of fact."

The authority of the Board is within the Railway Act and the Special Act when referred to, but it cannot ignore any legal dispositions of the Act or of any Special Act. Section 39, subsection 2, says:—

> "(2) The Board may, except as otherwise expressly provided, order by whom, in what proportion, and when, the cost and expenses of providing, constructing, reconstructing, altering, installing and executing such structures, equipment, works, renewals, or repairs, or of the supervision, if any, or of the continued operation, use or maintenance thereof, or of otherwise complying with such order, shall be paid."

In the present instance, the obligations to do, the party to whom they are incumbent, are expressly and specifically provided by the Acts above referred to, and the Procès-Verbal, which is law.

Moreover, it might be noted that the Procès-Verbal, when passed, in 1911, was in accordance with the Government Railways Act, then governing the Intercolonial Railway.

These different legal enactments above mentioned, the provincial statutes, the Government Railways Act, the Procès-Verbal, and the Municipal Code are servitudes imposed by law and, as a servitude is a dismemberment of property, it is safe to say that section 6 of the Quebec Civil Code applies, viz:—

> "The laws of Lower Canada govern the immovable property situate within its limits."

Section 92 of the British North America Act gives exclusive authority to the provinces to legislate *on property* and civil rights in the province; and subsection 8, on municipal institutions.

I am well aware of the Canadian National Railways Act of 1919, as amended by chapter 13, 18-19 George V, section 16, but I contend that this statute has no retrospective effect and that the servitudes, obligations, imposed on the railway and existing before 1923 are still in force and binding on the railway, even if there were different enactments in the Canadian National Railways Act; but there are none, and that the servitudes existing on the railway prior to 1923 cannot, in my opinion, be ignored by the Board.

It being established that the highway, called "roadway" on Exhibit No. 2, crossing the railway, was used by the public since at least 1898 and maintained open to the public by the railway since that time at the location marked on the plan, without any objection, up to May, 1932, it follows necessarily that, even if there were no statutory dispositions governing the highway crossing at Mitchell, there is the absolute proof of a valid dedication by the railway up to that time. I say "valid" because this railway was not under the jurisdiction of the Board prior to 1923, and any dedication made before that time was and is still valid, without permission from the Board. Moreover, as the public has been the constant user, has accepted the dedication, the seniority rule would not apply, even if there was absolute proof of seniority which, in my opinion, there is not.

It is true that the plan filed under the requirements of the Quebec Railway Act does not show any highway at Mitchell, but the Quebec Act did not require the indications of roads, highways, on plans to be filed. If such plans can prove anything, they can prove only what the law required to be indicated on them and not the non-existence of things that the plans were not compelled to indicate.

It is also true that there is a printed plan, Exhibit No. 3, but this plan, although it appeared to have been filed by the Applicant, was in reality filed by Mr. Darveau, as it appears by the record of proceedings at the hearing, p. 1401 (second line): "I have another plan, which was filed, I think, as Exhibit No. 3." (Darveau.)

To destroy this negative evidence, there are the positive declarations of Messrs. Joseph Beaulieu and Tarre Dubé who affirm that a public road, used by the public, existed prior to the construction of the railway, at or near the location of the present highway crossing, indicated on Exhibit No. 2.

This controverted evidence is not, in my opinion, proof of seniority because, it being admitted that the public was the undisputed possessor of the right of way for over 35 years, it appertained to the railway to prove absolutely the illegality of the possession of the Applicant. The axiom in law of "casus possidentis semper melior est" applies.

I may add: Plan Exhibit No. 2 shows that this highway crossing is to the advantage of the Railway because the public cannot reach the station without crossing either the siding or the main track.

My conclusions are that the railway is legally bound to the maintenance of this highway crossing at Mitchell, mileage 77.06, Chaudiere Subdivision, and that the Board has jurisdiction to uphold this legal obligation and to order the railway to maintain it, according to law and the regulations of the Board.

I do not impugn the "seniority rule" which is sound and just, but I say that it does not apply when there are legal dispositions or agreements expressed or implied concerning highway crossings, such as in the present instance.

I would, therefore, order the railway to maintain the highway crossing above mentioned, with all necessary appliances for the safety of the public and the protection of passengers and crew of trains passing over that crossing, with costs on the Canadian National Railways.

January 16, 1934.

NOTES AND AUTHORITIES

Definitions.

Special Act.—see Railway Act 1919, Sec. 2 (28).

"(28) 'Special Act,' when used with reference to a railway, means any Act under which the company has authority to construct or operate a railway, or which is enacted with special reference to such railway, whether heretofore or hereafter passed, and includes:—

"(*a*) all such Acts,

"(*b*) with respect to the Grand Trunk Pacific Railway Company, the National Transcontinental Railway Act, and any amendments thereto, and any scheduled agreements therein referred to, and

"(*c*) any letters patent, constituting a company's authority to construct or operate a railway granted under any Act, and the Act under which such letters patent were granted or confirmed."

Roads,—Elliott on—see Vol. 1, C.R.C., p. 331:—

"The term highway is the generic name for all kinds of public ways, including county and township roads..... Although every public thoroughfare is a highway, it is not essential that every highway should be a thoroughfare, as it is now well settled that a cul de sac may be a highway" and "In order that a way be considered a public one, it is not necessary that it should be of such dimensions as to make it suitable for use by horsemen and vehicles, unless the statute so provides. When the statute declares what shall constitute a highway, it governs..... In the absence of a statute, a way may be public, although it is suitable for passage only by footmen."

Dedication.—Hals., The Laws of England, Vol. 16, Part III, p. 33, Sections 40, 41, 42, 43, 44, 46 & 47;

"40. A claim to a public right of way may be based either upon dedication and acceptance, or upon some statute. There is high authority for saying that a highway may also be acquired by prescription but, even if this be so, it is unnecessary, and not the practice, to base a claim on such ground.

"Rights of way which exist by virtue of some custom, e.g., a churchway, are not highways.

"42. Dedication necessarily presupposes an intention to dedicate—there must be animus dedicandi. The intention may be openly expressed in words or writing, but, as a rule, it is a matter of inference; and it is for a jury to say whether such intention is to be inferred from the evidence as to the acts and behaviour of the landowner when viewed in the light of all the surrounding circumstances.

"43. Acceptance by the public requires no formal act of adoption by any persons or authority but is to be inferred from public user of the way in question. Even if an express intention to dedicate is proved, it is necessary to prove also that the way has been in fact thrown open to the public and used by them."

"44. An intention to dedicate land as a highway can only be inferred against a person who was at the material time in a position to make an effective dedication—that is, as a rule, a person who is absolute owner in fee simple and sui juris. When, however, a prima facie case is proved of an intention to dedicate, express or implied, it lies upon the defendant to show that the state of the title to the land is or was such as to render any such intention inoperative.

"A mere right of pre-emption over adjoining land does not render dedication of such land impossible without the consent of the person having such right."

Vol. 1, C.R.C., p. 327:—
Township of Gloucester v. Canada Atlantic Railway Co.

Vol. 2, C.R.C., p. 245:—
Grand Trunk Railway Co. v. Valliear.

"Railway lands may be dedicated for public or other user so long as that user is not incompatible with the present and actual requirements of the railway."

Page 247:—

"A railway company may grant an easement over the land as soon as they have become proprietors of the land.

"This conclusion is in accord with United States Law in Elliott on Railways, sec. 1140, and Lehigh, etc., R.W. Co. v. McFarlane, 43 N.J.L. 605; Turner v. Fichley, 145 Mass. R. 438."

I may add immediately that this Judgment was reversed in Appeal not on principle but on the fact that the railway was prevented by statutory dispositions even to sell; it follows that it could not grant: was not "sui juris," Vol. 3, C.R.C., p. 399; this question was fully discussed and also the applications of previous statutes binding on the railway when the easement or servitudes began.

Code Municipal Quebec:—
Que. R.J.O., 7 B.R. 121;
C.P.R. v. Corp. de Notre Dame;
Que. R.J.O., 67 C.S. p. 150;
Courtemanche vs. Henry;
p. 462: Tessier v. Drolet;
Que. R.J.O., 27 B.R., p. 226;
Parent vs. Mendellsohn.
55 C.S., p. 153:
Bonnais vs. Champagne;
65 C.S., p. 539:
Begin vs. Provost.

Definitions:—

Funk & Wagnall—The Standard Dictionary—
"Roadway": a road;
"Road": a strip of land set aside for passage private or public, especially of vehicles, *specifically a highway:*

Webster—Encyclopedia—
"Roadway": a road;
"Road": is generally applied to highways but has a broader sense, including highway, street, lane, etc.

Circumstances have in the past led the Board to depart from the application of the seniority rules.

11, C.R.C., p. 165:
City of Regina v. C.P.R.
16, C.R.C., p. 250:
Municipalities of Ste. Anne de Bellevue and Senneville v. G.T.R. and C.P.R.
16, C.R.C., p. 413:
City of Medicine Hat v. C.P.R.
18, C.R.C., p. 381:
City of Winnipeg v. C.P.R.
23, C.R.C., p. 89:
City of Port Arthur v. C.P. and C.N.R. Cos.
22, C.R.C., pp. 189 and 194;
26, C.R.C., p. 246;
36, C.R.C., pp. 357 and 364;
29, C.R.C., p. 162;
35, C.R.C., p. 158;
40, C.R.C., p. 290 and following; where dedication, statutory dispositions are discussed.

Other Authorities

Section 274 of the Federal Railway Act, 1919, ss. (1) (*c*), and ss. (2) and (3).

Interpretation of Statute, Chap. 1, R.S.C. 1927, Sec. 19, ss. (*b*):—

"19. Where any Act or enactment is repealed; or where any regulation is revoked, . . . such repeal or revocation shall not, save as in this section otherwise provided . . . .

"(*b*) affect the previous operation of any Act, enactment or regulation so repealed or revoked, or anything duly done or suffered thereunder, or

"(*c*) affect any right, privilege, obligation or liability acquired, accrued, accruing or incurred under the Act, enactment or regulation so repealed or revoked."

Section 20:

"20. Whenever any Act or enactment is repealed, and other provisions are substituted by way of amendment, revision or consolidation,

"(*a*) all regulations, orders, ordinances, rules and by-laws made under the repealed Act or enactment shall continue good and valid, in so far as they are not inconsistent with the substituted Act or enactment, until they are annulled and others made in their stead; and

"(*b*) any reference to any unrepealed Act, or in any rule, order or regulation made thereunder to such repealed Act or enactment, shall, as regards any subsequent transaction, matter or thing, be held and construed to be a reference to the provisions of the substituted Act or enactment relating to the same subject-matter as such repealed Act or enactment; and, if there is no provision in the substituted Act or enactment relating to the same subject-matter, the repealed Act or enactment shall stand good, and be read and construed as unrepealed so far only as is necessary to support, maintain or give effect to such unrepealed Act, or such rule, order or regulation made thereunder."

OTTAWA, January 16, 1934.

(Traduction)

Requête du Conseil Municipal de la paroisse de Notre-Dame-du-Bon-Conseil, dans le Comté de Drummond, P.Q., pour une ordonnance déclarant public le passage à niveau privé, à Mitchell, dans le comté de Drummond, sur la ligne des chemins de fer Nationaux du Canada.

Dossier 38625

Entendu à Drummondville, P.Q., le 28 novembre 1934.

Le Commissaire Stoneman: —

Dans cette cause, la municipalité, dans une lettre en date du 6 février 1933, fit une demande à la Commission en les termes suivants: —

> " A une séance régulière du Conseil Municipal de la paroisse de Notre-Dame-du-Bon Conseil, dans le comté de Drummond, tenue dans la salle du Conseil le 6 février 1933; —
>
> " Vu que nous avons appris que la crossing du chemin de fer Canadien National est considérée comme chemin privé à Mitchell à la Commission des chemins de fer à Ottawa, et considérant que cette traverse de Mitchell est publique depuis au delà de vingt ans, en sorte,
>
> " Il est proposé par M. le conseiller Alphonse Boisvert, appuyé par le conseiller M. Georges Lauzière, que demande soit faite à ladite Commission des chemins de fer de la considérer comme telle et pouvoir avoir des affiches voulues pour la protection du public. Adopté.
>
> " (Signé) ELPHÈGE RENAUD,
> *" Secrétaire-Trésorier ".*

"Vraie copie."

La compagnie du chemin de fer, dans sa réponse à la Commission, — dont une copie appert avoir été transmise à la municipalité, — consent à la demande pourvu que tous les frais de construction et d'entretien du passage soient à la charge de la municipalité; elle fait parvenir aussi à la Commission un plan semblable à celui qui fut produit à l'audition de la cause comme Exhibit N° 2 et désigné sous le titre de Chemin de fer Intercolonial, district N° 1, Mitchell, daté le 4 avril 1916, et revisé le 31 janvier 1921, montrant les cours à la station de la compagnie, où la municipalité désire, par la croix rouge indiquée sur le plan, que le passage soit converti en un passage public. Les endroits où se sont faits les arpentages des routes dans le voisinage sont aussi indiqués sur le plan, mais il ne se trouve pas indiqué de passage public à l'endroit qui fait l'objet de discussion.

La municipalité, dans sa réponse, s'oppose aux frais qu'on veut lui imposer. Une enquête fut faite par l'ingénieur de la Commission qui fait rapport comme suit:—

> "Je recommande que la municipalité requérante soit autorisée à construire et à entretenir à ses frais un passage à niveau de voie publique à travers la voie de la compagnie des chemins de fer Nationaux du Canada, à un endroit situé à 170 pieds à l'ouest de la station, à Mitchell, tel qu'indiqué sur le plan daté le 31 janvier 1921 produit avec la réponse de la compagnie du chemin de fer."

Le rapport de l'ingénieur divisionnaire fut envoyé à la municipalité qui fit réponse qu'elle s'opposait à ce qu'une ordonnance soit rendue suivant la recommandation de l'ingénieur, et, finalement, l'affaire fut mise sur la liste des causes à être entendues.

A l'audition de la cause, la municipalité soumit comme preuve trois points à l'appui de sa requête et des objections qu'elle a déjà fait valoir relativement au coût de construction et d'entretien qu'on voulait lui imposer, à savoir:—

1. Qu'avant la construction du chemin de fer il existait un chemin qui procurait un accès public;
2. Que la compagnie du chemin de fer avait entretenu ce passage à ses frais pendant au moins vingt ans;
3. Que le public s'est servi de ce passage depuis bien des années.

Monsieur Marier, procureur de la requérante, produisit aussi un plan connu et désigné comme plan officiel d'une partie du Canton de Wendover, dans le comté de Nicolet, daté Arthabaskaville, le 11 février 1893, déposé au ministère des Terres et Forêts de la Province de Québec le 1er mars 1893, et montrant les rangs, lots, paroisses et lignes de division de ce Canton, ainsi que la voie du chemin de fer. Le plan montre aussi l'agrandissement du village, les routes publiques, les lignes de chemins de fer et subdivisions, mais il n'indique pas de passage public à travers la voie ferrée à l'endroit en question.

La compagnie du chemin de fer admet qu'elle a entretenu ce passage pendant un grand nombre d'années, et que le public s'en est servi; mais elle soutient que sa ligne de chemin de fer est plus ancienne en date à l'endroit dont il s'agit, et produisit des plans, marqués Exhibits Nos 2 et 6, à l'appui de sa prétention.

L'Exhibit N° 2—plan du chemin de fer Intercolonial, District N° 1, Mitchell, daté le 4 avril 1916, et revisé le 31 janvier 1921, sur lequel sont indiquées les cours de la compagnie du chemin de fer à la station, montre les routes publiques, mais non pas celle à l'endroit où l'on demande l'établissement du passage.

L'Exhibit N° 6—plan de la compagnie du chemin de fer du Comté de Drummond, daté Drummondville, le 4 août 1888, montre l'endroit à partir de la station 490 jusqu'à l'embranchement sud-ouest de la rivière Nicolet. Ce plan a été déposé le 14 août 1888 au ministère des Travaux Publics, à Québec, tel que requis en vertu de l'article 8 de la Loi des chemins de fer revisée de Québec de 1880. Il montre les routes publiques qui y existent, les lots, les lignes de division et les terrains des propriétaires où passe le chemin de fer, mais aucune route publique ne s'y trouve indiquée à l'endroit en question.

La ligne de chemin de fer fut en premier lieu construite par la compagnie du chemin de fer du Comté de Drummond, et incorporée en 1887 ou 1888 par le statut provincial. Le plan du tracé produit en vertu de l'Acte des chemins de fer de Québec de 1880, montre les endroits des chemins publics croisés par la voie ferrée, mais ne montre pas de passage de voie publique à l'endroit dont il s'agit.

Aucun des plans produits comme Exhibits 2, 3 et 6 ne montre un passage à niveau de voie publique à cet endroit lorsque la ligne du chemin de fer a été construite, non plus qu'il n'existe une clause statutaire permettant d'établir un chemin public à travers une voie ferrée qui aurait pour effet de créer des droits d'ancienneté, pour ce qui est des routes, à l'endroit du passage en question.

Dans le cas qui nous occupe, la nécessité d'établir un passage de voie publique, à l'endroit dont il s'agit, est admise; mais reste la question de savoir qui doit l'entretenir. Tout dépend de la question de séniorité et de la preuve établissant qu'il existait un passage de chemin public à l'époque de la construction du chemin de fer, ou une clause permettant l'établissement d'un tel passage à l'endroit en question. La municipalité requérante n'a pas produit dans ce cas-ci aucune preuve de l'existence de ce passage comme auraient su le faire d'autres parties intéressées pour des requêtes semblables à celle-ci portant sur un nombre considérable d'endroits situés sur les lignes de chemins de fer relevant de la

juridiction de la Commission. Le fait que le public se sert de passages privés et qu'il s'en est servi pendant des années, ne constitue pas l'établissement de chemins publics. Il faut que la Commission le décrète et l'ordonne.

Voir: Cause de la Cité de Ford *vs* G.T.R., rapportée à page 28, Vol. 1, des Can. Ry. Cases.

On peut référer aux causes suivantes comme jurisprudence suivie dans l'application de la règle d'antériorité de postériorité (senior and junior), alors que des passages privés ont été convertis en passages publics à la demande de la municipalité:—

Cause du Village de Weston *vs* C.P. et G.T.R. Cos. (passage de l'Avenue Denison), rapportée au Vol. 7, C.R.C., p. 79;
Cause de la Ville de St-Pierre *vs* G.T.R. (passage de l'Avenue Simplex), 13 C.R.C. 1;
Cause de la Cité de Montréal *vs* C.P.R., 18 C.R.C. 50;
Cause de la Cité de Lachine *vs* G.T.R., 18 C.R.C. 385.

Une ordonnance devrait être rendue accordant la requête.

Attendu qu'il n'a pas existé de chemin public à l'époque de la construction du chemin de fer à l'endroit qui fait l'objet du présent litige, non plus qu'on n'y trouve nulle clause permettant d'en établir un, la Commission ne devrait pas, à mon avis, se départir de la règle "senior et junior" dans le cas actuel. La municipalité étant postérieure en date au chemin de fer, par conséquent, les frais de construction et d'entretien dudit passage devront être à la charge de cette corporation municipale.

Ottawa, le 16 janvier 1934.

S'est rallié le Commissaire Stone.

Le commissaire en chef suppléant dissident.

Requête du Conseil Municipal de la paroisse de Notre-Dame-du-Bon-Conseil, comté de Drummond, P.Q., demandant que la traverse (à niveau) publique depuis au delà de vingt ans soit considérée comme telle et pourvue des affiches voulues pour la protection du public.

Dossier N° 38625

JUGEMENT

Garceau, Commissaire en chef suppléant: —

L'audition de cette cause a eu lieu à Drummondville le 28 novembre 1933.

Le 6 février 1933, la Commission des chemins de fer a reçu la demande suivante: —

"Vu que nous avons appris que la crossing du chemin de fer Canadien-National est considérée comme chemin privé à Mitchell à la Commission des chemins de fer à Ottawa, et considérant que cette traverse de Mitchell est publique depuis au delà de vingt ans en sorte.

"Il est proposé par M. le Conseiller Alphonse Boisvert; appuyé par le Conseiller M. Georges Lauzière, que demande soit faite à ladite Commission des chemins de fer de la considérer comme telle et pouvoir avoir des affiches voulues pour la protection du public."

Le chemin de fer, par sa réponse du 10 mars 1933, consent à cette demande mais à la condition que le coût de l'entretien de cette traverse à niveau serait aux frais de la Corporation requérante, y compris le coût des signaux indicateurs, ce qui fut refusé.

La preuve des faits essentiels n'est aucunement contredite si ce n'est quant à ce qui concerne l'ancienneté du chemin de fer ou du chemin public. Je toucherai à cette question de l'ancienneté plus loin.

Le plan, Exhibit N° 2, de même que celui produit avec la réponse de monsieur Temple, avocat du chemin de fer, le 10 mars 1933, indiquent l'endroit où le chemin public traverse la voie ferrée. Les lignes pointillées traversant la voie ferrée, entre lesquelles on lit le mot " roadway " indiquent l'endroit où ce chemin public existe depuis au moins 1898 à date.

Ce chemin croisant la voie ferrée a été fréquenté par le public et utilisé comme voie publique, suivant la définition de la Loi des chemins de fer, depuis au moins 1898 jusqu'au mois de mai 1932, sans aucune objection du chemin de fer; bien au contraire, le chemin de fer a toujours maintenu, réparé cette traverse à niveau; durant un certain temps y a placé des signaux indicateurs, des garde-bestiaux, des clôtures et, toujours, l'a tenue en bon état pour l'usage du public. Ces faits, comme je l'ai dit déjà, sont au dossier et ne sont pas contredits.

Afin de décider qui devra payer le coût de l'entretien de cette traverse à niveau, partie de la voie publique, du chemin de fer ou de la requérante, il est nécessaire de connaître les origines de ce chemin de fer.

Il fut bâti par la compagnie Drummond County Railway, incorporé en 1886 par le statut provincial, chap. 81, sous les dispositions de l'Acte des chemins de fer de Québec de 1880, chap. 43.

Le Statut Fédéral 62-63 Victoria, chap. 6, promulgué le 11 août 1899, autorisait le Gouverneur-en-Conseil d'acheter l'actif du chemin de fer du Comté de Drummond et celui-ci de vendre au gouvernement.

Le 4 novembre 1899, en conformité du statut précité, un Arrêté-en-conseil fut passé recommandant l'achat du chemin de fer du Comté de Drummond.

Par contrat sous seing privé, le 7 novembre 1899, le chemin de fer du Comté de Drummond vendait à Sa Majesté toute son entreprise et le chemin de fer.

Depuis cette date, ce chemin de fer a toujours été la propriété de la Puissance du Canada et est devenu partie intégrante du chemin de fer Intercolonial.

Le Statut 9-10 Georges V, chap. 13, promulgué le 6 juin 1919, créa la compagnie des chemins de fer Canadiens Nationaux. Ce Statut est reproduit au chap. 172 des Statuts Revisés du Canada 1927.

Le 20 janvier 1923, le Gouverneur-en-conseil confiait à la compagnie des chemins de fer Canadiens Nationaux l'administration et l'exploitation du chemin de fer Intercolonial — Arrêté-en-conseil P. 115.

Ce chemin de fer a donc été d'abord régi par l'Acte des chemins de fer de Québec, et depuis le 7 novembre 1899, par l'Acte spécial régissant les chemins de fer du Gouvernement.

L'Acte des chemins de fer de Québec décrète à l'article 48 du chapitre 43 des Statuts de 1880 que les chemins de fer devront pourvoir à l'entretien et aux réparations des traverses à niveau faisant partie de la voie publique. L'article 48 dit: —

> " Chaque fois qu'un passage à niveau sur un chemin de fer sera en mauvais ordre, le principal officier de la municipalité ou autre division locale ayant juridiction sur le grand chemin ainsi traversé, pourra signifier en la manière ordinaire, à la compagnie, un avis pour la requérir de faire de suite les réparations nécessaires;.....et au cas de défaut de ce faire, l'autorité compétente dans la municipalité ou autre division locale, dans la juridiction de laquelle le passage sera situé, pourra faire ces réparations, et elle pourra recouvrer les frais, dépenses et déboursés faits ou encourus à cet égard, par action contre la compagnie, comme deniers déboursés pour l'usage de la compagnie; pourvu toujours, que ni la présente section, ni rien de ce qui sera fait sous son empire, n'aura l'effet de changer en aucune manière la responsabilité de la compagnie à cet égard."

Le Statut de 1886, régissant les chemins de fer du Gouvernement, contenait des dispositions similaires et cet Acte gouvernait alors le chemin de fer Intercolonial. Les articles 16 et 19 du chap. 38 des Statuts de 1886 se lisent comme suit: —

" 16. Dans le cours des six mois qui suivront l'expropriation de terrains pour l'usage du chemin de fer, le ministre devra.....faire faire et entretenir, de chaque côté du chemin de fer, des clôtures..... aux traverses de fermes sur le chemin de fer, pour l'usage des propriétaires des terres adjacentes au chemin de fer, et aussi, à chaque croisement de route, des fossés, garde-bestiaux (cattle-guards) suffisantes pour empêcher les bestiaux et autres animaux d'avoir accès au chemin de fer."

" 19. A chaque chemin de traverse ou de ferme, sur le niveau du chemin de fer, le passage devra avoir, de chaque côté, d'assez bonnes clôtures pour permettre que les trains passent en sûreté."

Le Statut de 1906, régissant les chemins de fer du Gouvernement, avait aussi en substance les mêmes dispositions. Les articles 21, 22, par. 2, 24 et 25, du chap. 36 des Statuts Revisés du Canada 1906, se lisent comme suit: —

"21. Des écriteaux doivent être placés et maintenus en travers ou en saillie de la grande route à chaque endroit où elle est traversée de niveau par le chemin de fer, à une hauteur suffisante pour qu'il y ait seize pieds entre la grande route et le bord inférieur des écriteaux."

"22. ss. 2. Le ministre doit aussi, dans le délai susdit, construire et subséquemment entretenir à tous les croisements de routes, des fosses garde-bestiaux suffisantes pour empêcher les bestiaux et autres animaux d'avoir accès au chemin de fer."

"24. Après que ces clôtures ou fosses garde-bestiaux ont été érigées ou faites, et tant qu'elles sont entretenues en bon ordre, Sa Majesté n'est pas responsable de semblables dommages, à moins qu'ils ne soient causés par négligence ou de propos délibéré."

"25. A chaque chemin de traverse et de ferme, sur le niveau du chemin de fer, le passage doit avoir, de chaque côté, d'assez bonnes clôtures pour permettre que les trains y passent en sûreté."

Il faut donc conclure que jusqu'à j'anvier 1923, époque à laquelle le chemin de fer Intercolonial passa sous l'administration des chemins de fer Canadiens Nationaux, ce chemin de fer était légalement obligé au maintien et réparations des traverses à niveau faisant partie de la voie publique existant alors, l'est encore, à moins d'avoir été déchargé de cette obligation par une loi édictée par l'autorité législative compétente. — L'Acte des chemins de fer 1919, article 3.

En 1907, la voie ferrée fut déplacée à Mitchell Station, à l'est de la traverse à niveau et le lit de l'ancien chemin de fer devint un chemin public, appelé "roadway" sur l'exhibit N° 2, et sur le plan produit le 10 mars 1933. On constate sur ce plan que le chemin public traversant la voie ferrée est le trait d'union entre le chemin public antérieurement existant du côté nord de la voie ferrée et le nouveau chemin établi sur l'ancien lit du chemin de fer.

En 1911, la corporation de Notre-Dame-du-Bon-Conseil, légalement autorisée à ce faire par l'autorité législative compétente, a fait, passé, un procès-verbal produit comme Exhibit N° 3, où est déclaré, entre autres choses, ce qui suit:

"La traverse du chemin de fer Intercolonial ayant toujours été entretenue par la compagnie du chemin de fer, le sera encore, comme par le passé."

Les articles 20, 21 et 22 du Code Municipal de Québec se lisent comme suit:

"Toute compagnie de chemin de fer doit faire et entretenir les clôtures, *chemins,* ponts, fossés et cours d'eau sur les propriétés qu'elle possède ou occupe dans une municipalité, et est sujette, comme tout autre

contribuable, à toutes les dispositions des règlements, procès-verbaux et autres ordonnances municipales passés à cette fin, quand même tels travaux pour clôtures, *chemins*, ponts, fossés et cours d'eau ne seraient pas profitables à la compagnie."

21. "A défaut de la part de telle compagnie d'exécuter les travaux auxquels elle est tenue, en vertu de l'article 20, dans le délai prescrit, elle est passive des dommages occasionnés par sa négligence ou son refus, et d'une amende de vingt piastres pour chaque jour que dure telle négligence ou tel refus."

22. "Les dispositions des articles 20 et 21 s'appliquent aussi aux chemins de fer du gouvernement, provincial ou *fédéral*, exploités, soit par le gouvernement, soit par des particuliers."

Ce procès-verbal mentionné plus haut a encore force de loi.

La Commission des chemins de fer, en vertu des dispositions de la Loi des chemins de fer de 1919 a-t-elle le pouvoir de décharger le chemin de fer de ces obligations antérieurement imposées par l'autorité compétente? Je soumets respectueusement que même la Loi des chemins de fer impose à la Commission des chemins de fer l'obligation de faire respecter les lois de la Province à travers laquelle le chemin de fer est situé.

J'ai étudié avec beaucoup d'attention cette cause parce qu'elle est une cause "type" et que des centaines de traverses à niveau, parties de la voie publique, au moins dans Québec, le long du parcours de l'ancien chemin de fer Intercolonial, seront affectées si une décision contraire était rendue et que le public serait obligé au maintient et à l'entretien de ces traverses, quand on ne pourrait établir l'ancienneté de la voie publique, même quand jusqu'à présent ces traverses auraient été maintenues par le chemin de fer.

Bien plus, une telle décision serait à l'effet que les lois passées par la Législature de Québec, l'article 6 du Code Civil et les articles 20, 21, 22, du Code Municipal, seraient nulles, ultra-vires, inconstitutionnelles, du moins quant à ce qui regarde les chemins de fer du Gouvernement du Canada.

Je soumets que, même si la chose était vraie, la Commission des chemins de fer n'a aucune autorité pour décider de la validité de telles lois et est obligée de baser ses décisions sur les dispositions de ces lois.

En lisant l'article 33 de la Loi des chemins de fer les mots "loi spéciale" doivent comprendre les Statuts de Québec de 1880, l'Acte d'incorporation de la compagnie du chemin de fer du Comté de Drummond, l'Acte des chemins de fer du Gouvernement de 1886 et de 1906, les articles 20, 21 et 22 du Code municipal. L'article 33 de la Loi des chemins de fer se lit comme suit:

"33. (1) La Commission a pleine juridiction pour instruire, entendre et juger toute requête présentée par une partie intéressée ou en son nom:

"(*a*) Se plaignant qu'une compagnie ou qu'une personne a néligé de faire une action ou une chose qu'elle était tenue de faire par la présente loi, par la *loi spéciale* ou par des règlements établis, des ordonnances rendues ou des instructions données sous l'empire de l'une ou de l'autre loi par le gouverneur en son conseil, le ministre, la Commission, un ingénieur, inspecteur ou par une autre autorité légitime; ou qu'une compagnie ou une personne a fait ou fait une action ou une chose contrairement ou en contravention à la présente loi, à la *loi spéciale* ou à de tels règlements, ordonnances ou instructions; ou

(*b*) Demandant à la Commission de rendre une ordonnance ou de donner des instructions, une permission, une sanction ou une approbation que la loi l'autorise à rendre ou à donner, ou relativement à toute affaire, chose ou action qui par la présente loi par la *loi spéciale* est défendue, autorisée ou exigée.

"(2) La Commission peut ordonner et prescrire à toute compagnie ou personne de faire immédiatement, ou dans tel délai ou à telle époque qu'elle fixe, et de telle manière qu'elle prescrit, en tant qu'il n'y a rien d'incompatible avec la présente loi, tout action ou chose que cette compagnie ou personne est ou peut être tenue de faire sous l'empire de la présente loi ou de la *loi spéciale*. La Commission peut aussi défendre l'accomplissement ou la continuation de toute action ou chose contraire à la présente loi ou à la *loi spéciale*; et elle a, aux fins de la présente loi, pleine juridiction pour entendre et juger toute question tant de droit que de fait."

La juridiction de la Commission est déterminée par la Loi des chemins de fer et toute autre loi spéciale qui s'y réfère, mais la Commission ne peut ignorer, dans mon opinion, aucune des dispositions de la Loi des chemins de fer ou d'aucune loi spéciale. L'article 39 de la Loi des chemins de fer, au par. 2, dit:—

"39. (2) La Commission peut, sauf dispositions contraires expressément énoncées, ordonner par qui, dans quelle proportion et à quelle époque doivent être payés les frais et dépenses qu'entraînent la fourniture, la construction, la reconstruction, la modification, l'installation et l'exécution de ces structures, équipements, ouvrages, réfection ou réparations, ou leur surveillance, s'il en est, ou leur maintien en service, leur usage ou leur entretien continu, ou le fait de se conformer d'autre manière à cette ordonnance."

Dans le cas actuel, la loi indique clairement l'obligation et par qui elle doit être remplie, par les statuts auxquels j'ai déjà référé et le procès-verbal, lequel dans les circonstances est la loi.

Il est utile de remarquer que lorsque le procès-verbal a été passé, en 1911, l'Acte des chemins de fer du Gouvernement avait des dispositions similaires à celles édictées par le procès-verbal, quant à ce qui concerne la voie publique traversant le chemin de fer, alors observées par le chemin de fer.

Ces diverses dispositions légales contenues dans les Statuts provinciaux et fédéraux, le Code municipal de même que le procès-verbal, ont créé des servitudes légales et, comme une servitude est un démembrement de la propriété, on peut conclure que l'article 6 du Code civil s'applique: —

"Les lois du Bas-Canada régissent les biens immeubles qui y sont situés."

L'article 92 de l'Acte de l'Amérique Britannique du Nord donne juridiction exclusive aux provinces de légiférer Section 8, sur les institutions municipales de la province; Section 13, sur la propriété et sur les droits civils dans la province.

Je n'ignore pas les dispositions de l'Acte des chemins de fer Canadiens Nationaux de 1919, tel qu'amendé par chap. 13, 18-19 Geo. V, art. 16, mais je soumets que ce statut n'a pas d'effet rétroactif et que les servitudes, obligations, antérieurement imposées sur le chemin de fer et existant avant 1923 existent encore et le chemin de fer est obligé de les respecter, même si le statut plus haut cité avait des dispositions différentes, mais il n'en a pas.

Je soumets aussi respectueusement que les servitudes imposées au chemin de fer avant 1923 ne peuvent être ignorées par la Commission.

Comme il est reconnu que le chemin public appelé "roadway" sur l'Exhibit N° 2, traversant le chemin de fer, a servi au public depuis au moins 1898, a été entretenu ouvert au public par le chemin de fer depuis cette date, à l'endroit marqué sur le plan, sans aucune objection jusqu'à mai 1932, il s'ensuit nécessairement que même s'il n'y avait pas de dispositions statutaires ou légales statuant

sur ce chemin public traversant la voie ferrée à Mitchell, il y a la preuve complète d'une dédicace valide au public par le chemin de fer, (constitution d'une servitude de passage).

Je dis "valide" parce que ce chemin de fer jusqu'en 1923 n'était pas soumis à la juridiction de la Commission des chemins de fer et toute dédicace faite avant cette date était et est encore valide même sans la permission de la Commission des chemins de fer. Bien plus, comme le public s'est servi constamment de ce chemin, a accepté cette dédicace par le chemin de fer, la règle de l'ancienneté (seniority rule) ne pourrait avoir son application même s'il y avait une preuve complète d'ancienneté laquelle, du moins dans mon opinion, n'existe pas.

Il est vrai que le plan produit d'après les exigences de l'Acte des chemins de fer de Québec ne montre l'existence d'aucun chemin public à Mitchell, mais cet Acte n'exige pas que les plans produits indiquent les chemins existants. Si ces plans peuvent prouver quelque chose, ils ne prouvent que ce que la loi leur requiert d'indiquer et non la non-existence de choses que ces plans ne sont pas tenus d'indiquer.

Il est aussi vrai qu'il y a un plan imprimé, Exhibit N° 3, mais ce plan, bien qu'il apparaisse produit par la requérante, a été réellement produit par M. Darveau, comme il appert de sa déclaration lors de l'audition de la cause. On peut lire à page 1401 (deuxième ligne): "J'ai un autre plan qui a été produit, je crois, comme Exhibit N° 3."—(Darveau).

Pour annuler cette preuve négative, il y a les déclarations positives de MM. Joseph Beaulieu et Tarré Dubé qui déclarent qu'il y avait là un chemin public utilisé par le public, existant avant la construction du chemin de fer, à l'endroit ou près l'endroit où existe présentement la traverse à niveau indiquée sur le plan Exhibit N° 2.

Cette preuve contradictoire n'est pas, dans mon opinion, la preuve de l'ancienneté du chemin de fer parce qu'il y a l'admission au dossier que le public avait la jouissance et la possession de ce droit de passage sur le chemin de fer depuis au delà de 35 ans, et c'était au chemin de fer à prouver d'une manière positive, absolue, l'illégalité de la possession de la requérante. L'axiome "casus possidentis semper melior est" doit avoir son application ici.

J'ajoute: le plan N° 2 montre que cette traverse est à l'avantage du chemin de fer parce que sans ce chemin public traversant le chemin de fer, le public ne peut avoir accès à la gare sans traverser d'un côté la voie principale, de l'autre côté, une voie d'évitement du chemin de fer.

Je conclus que le chemin de fer est légalement obligé à l'entretien de cette traverse à niveau à Mitchell, au mille 77.06, Subdivision Chaudière, et que la Commission des chemins de fer a juridiction pour faire observer cette obligation légale et contraindre le chemin de fer à l'entretien de la traverse à niveau, suivant la loi et les règlements de la Commission.

Je ne mets pas en doute la règle de l'ancienneté (seniority rule) qui est juste et équitable, mais je soumets qu'elle ne peut pas s'appliquer quand il y a des dispositions légales ou des accords formels ou tacites qui régissent une traverse à niveau comme dans le cas présent.

En conséquence, j'ordonnerais au chemin de fer de tenir en bon état de réparation cette partie de la voie publique traversant le chemin de fer ci-haut mentionné avec tous les accessoires nécessaires pour la sauvegarde du public et la protection des passagers et des employés sur les convois passant sur cette traverse à niveau, avec dépens contre les chemins de fer Canadiens Nationaux.

OTTAWA, le 16 janvier 1934.

NOTES ET AUTORITÉS

Définitions.

Loi Spéciale.—Voir l'Acte des chemins de fer de 1919, Art. 2 (18).

"18" "loi spéciale", lorsque cette expression est employée relativement à un chemin de fer, signifie toute loi en vertu de laquelle la compagnie est autorisée à construire ou à exploiter un chemin de fer, ou qui est édictée spécialement au sujet de ce chemin de fer, et qui a été adoptée dans le passé ou qui le sera à l'avenir, et comprend —

"(*a*) Toutes ces lois;

"(*b*) quant à la "Grand Trunk Pacific Railway Company", la Loi du chemin de fer National Transcontinental, et toute modification à cette loi, ainsi que les contrats annexés auxquels cesdites lois réfèrent; et

"(*c*) les lettres patentes qui autorisent une compagnie à construire et à exploiter un chemin de fer et qui lui ont été conférés sous l'empire d'une certaine loi, ainsi que la loi en vertu de laquelle s'est effectué l'octroi ou la confirmation de ces lettres patentes."

Roads—Elliott on Roads—See Vol. 1, C.R.C., p. 331:

"The term highway is the generic name for all kinds of public ways, including county and township roads . . . . Although every public thoroughfare is a highway, it is not essential that every highway should be a thoroughfare, as it is now well settled that a cul-de-sac may be a highway" and "In order that a way may be considered a public one, it is not necessary that it should be of such dimensions as to make it suitable for use by horsemen and vehicles, unless the statute so provides. When the statute declares what shall constitute a highway, it governs . . . In the absence of a statute, a way may be public, although it is suitable for passage only by footmen."

Dedication—Hals., The Laws of England—Vol. 16, Part III, p. 33, Sections 40, 41, 42, 43, 44, 46 and 47:—

"40. A claim to a public right of way may be based either upon dedication and acceptance, or upon some statute. There is high authority for saying that a highway may also be acquired by prescription; but, even if this be so, it is unnecessary, and not the practice, to base a claim on such ground.

Rights of way which exist by virtue of some custom, e.g., a churchway, are not highways."

"42. Dedication necessarily presupposes an intention to dedicate—there must be animus dedicandi. The intention may be openly expressed in words or writing, but, as a rule, it is a matter of inference; and it is for a jury to say whether such intention is to be inferred from the evidence as to the acts and behaviour of the landowner when viewed in the light of all the surrounding circumstances."

"43. Acceptance by the public requires no formal act of adoption by any persons or authority but is to be inferred from public user of the way in question. Even if an express intention to dedicate is proved, it is necessary to prove also that the way has been in fact thrown open to the public and used by them."

"44. An intention to dedicate land as a highway can only be inferred against a person who was at the material time in a position to make an effective dedication—that is, as a rule, a person who is absolute owner in fee simple and sui juris. When, however, a prima facie case is proved

of an intention to dedicate, express or implied, it lies upon the defendant to show that the state of the title to the land is or was such as to render any such intention inoperative.

"A mere right of pre-emption over adjoining land does not render dedication of such land impossible without the consent of the person having such right."

Vol. 1, C.R.C., page 327:—
Township of Gloucester vs. Canada Atlantic Railway Co.

Vol. 2, C.R.C., page 245:—

Grand Trunk Railway Co. vs. Valliear.

"Railway lands may be dedicated for public or other user so long as that user is not incompatible with the present and actual requirements of the railway."

P. 247:—

"A railway company may grant an easement over the land as soon as they have become proprietors of the land.

This conclusion is in accord with United States Law in Elliott on Railways, sec. 1140, and Lehigh, etc., R.W. Co. v. McFarlane, 43 N.J.L., 605; Turner v. Fitchley, 145 Mass. R. 438."

I may add immediately that this Judgment was reversed in Appeal not on principle but on the fact that the railway was prevented by statutory dispositions even to sell; it follows that it could not grant: was not "sui juris," Vol. 3, C.R.C., p. 399; this question was fully discussed and also the applications of previous statutes binding on the railway when the easement or servitudes began.

Code Municipal de Québec:—

Que. R.J.O., 7 B.R. 121;
C.P.R. vs. Corp. de Notre-Dame;
Que. R.J.O., 67 C.S. p. 150;
Courtemanche vs. Henry;
p. 462: Tessier vs. Drolet;
Que. R.J.O., 27 B.R., p. 226:
Parent vs. Mendellsohn.
55 C.S., p. 153:
Bonnais vs. Champagne;
65 C.S., p. 539:
Bégin vs. Provost.

Definitions:

Funk & Wagnell—The Standard Dictionary—

"Roadway": a road;

"Road": a strip of land set aside for passage private or public, especially of vehicles, *specifically a highway;*

Webster—Encyclopedia—

"Roadway": a road;

"Road": is generally applied to highways but has a broader sense, including highway, street, lane, etc.

Les circonstances ont dans le passé mis la Commission dans l'obligation de se départir de l'application de la règle de séniorité. 11, C.R.C., p. 165: Cité de Régina vs C.P.R.

16, C.R.C., p. 250:

Municipalités de Ste-Anne de Bellevue et de Senneville vs G.T.R. et C.P.R.

16, C.R.C., p. 413 Cité de Medecine Hat vs C.P.R.

18, C.R.C., p. 381: Cité de Winnipeg vs C.P.R.

23, C.R.C., p. 89: Cité de Port-Arthur vs C.P. et C.N. Rys.

22, C.R.C., pp. 189 et 194;

26, C.R.C., p. 236;

36, C.R.C., pp. 357 et 364;

29, C.R.C., p. 162;

35, C.R.C., p. 158;

40, C.R.C., p. 290 et suivantes; où la question de dédicace de même que les dispositions de la loi sont l'objet de discussion.

Autres autorités

L'article 274 de la Loi fédérale des chemins de fer de 1919, paragraphes (1) (*c*) et (2) et (3).

Le Statut d'interprétation, Vol. 1, des Status Revisés du Canada de 1927, Chap. 1, Art. 19, paragraphe (*b*):

"19. Lorsqu'une loi ou une disposition législative est abrogée ou quand une règle est révoquée, alors, à moins que l'intention contraire ne soit manifeste, cette abrogation ou révocation ne peut, sauf s'il en est autrement prévu au présent article,

"(*b*) entraver l'exécution antérieure d'une loi, d'une disposition législative ou d'un règlement ainsi abrogé ou révoqué, ou une chose dûment faite ou soufferte sous leur autorité; ni

(*c*) porter atteinte à un droit, à un privilège, à une obligation ou à une responsabilté acquise, obtenue, à obtenir ou encourue sous l'autorité de la loi, de la disposition législative ou du règlement ainsi abrogé ou révoqué."

Article 20:

"20. Lorsqu'une loi ou une disposition législative est abrogée et que d'autres prescriptions y sont substituées par voie de modification, de revision ou de codification,

"(*a*) Tous règlements, arrêtés, ordonnances, règles et statuts faits sous l'autorité de la loi ou de la disposition législative abrogée, continuent d'être en vigueur, en tant qu'ils ne sont pas incompatibles avec la loi ou la disposition législative substituée, jusqu'à ce qu'ils soient annulés et que d'autres soient faits pour les remplacer; et

"(*b*) La mention d'une loi non abrogée ou, dans une règle ou un règlement édicté ou dans un arrêté rendu sous son empire, la mention de cette loi ou de cette disposition législative abrogée doit être, relativement à toute opération, affaire ou chose subséquente, considérée et interprétée comme la mention des prescriptions de la loi ou de la disposition législative substituée se rapportant au même objet que celui de la loi ou de la disposition législative abrogée; et s'il n'y a dans la loi ou dans la disposition législative substituée aucune prescription qui se rapporte au même objet, la loi ou la disposition législative abrogée demeure exécutoire et se lit et s'interprète comme si l'abrogation n'en avait pas eu lieu, mais seulement en tant qu'il est nécessaire pour appuyer, maintenir ou mettre à effet la loi non abrogée, ou la règle, l'arrêté ou le règlement établi sous son autorité."

OTTAWA, le 16 janvier 1934.

ORDER No. 50719

In the matter of the application of the Municipal Council of the Parish of Notre Dame du Bon Conseil, in the County of Drummond and Province of Quebec, hereinafter called the "Applicant," under Section 257 of the Railway Act, for the approval of the crossing over the Canadian National Railways at Mitchell as a public highway crossing, at the point shown on the plan dated January 31, 1921, on file with the Board under file No. 38625.

MONDAY, the 29th day of January, A.D. 1934.

S. J. McLEAN, *Asst. Chief Commissioner.*
F. N. GARCEAU, K.C., *Deputy Chief Commissioner.*
J. A. STONEMAN, *Commissioner.*
G. A. STONE, *Commissioner.*

Upon hearing the application at the sittings of the Board held at Drummondville, November 28, 1933, in the presence of counsel for the applicant and the railway company, and what was alleged; and upon the report and recommendation of the Division Engineer of the Board, concurred in by its Chief Engineer,—

It is ordered: That the applicant be, and it is hereby, authorized, at its own expense, to construct and maintain a highway crossing over the Canadian National Railways at a point about 170 feet west of the station at Mitchell, in the county of Drummond and province of Quebec, as shown on the said plan on file with the Board under file No. 38625, and in accordance with and subject to the Standard Regulations of the Board Affecting Highway Crossings.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 50731

In the matter of the application of the Canadian Pacific Railway Company, hereinafter called the "Applicant Company," for permission to file upon less than statutory notice a supplement to Tariff C.R.C. No. E-4671, changing the rate on salt, from Windsor, Ontario, to Chatham, Ontario.

File No. 27612.91

FRIDAY, the 26th day of January, A.D. 1934.

S. J. McLEAN, *Asst. Chief Commissioner.*
G. A. STONE, *Commissioner.*

Upon its appearing that, in carrying forward in Supplement No. 6 to Tariff C.R.C. No. E-4671, a printer's error was made in showing a rate of 6 cents per 100 pounds from Windsor, Ontario, to Chatham, Ontario, instead of the proper rate of 9 cents per 100 pounds; and its being advisable that the applicant company be permitted to correct the error as soon as possible,—

The Board orders: That the Applicant Company be, and it is hereby, permitted to publish and file a supplement to its Tariff C.R.C. No. E-4671 upon three days' notice, providing for a rate of 9 cents per 100 pounds on salt, in carloads, from Windsor, Ontario, to Chatham, Ontario.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 50755

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.2

MONDAY, the 5th day of February, A.D. 1934.

S. J. MCLEAN, *Assistant Chief Commissioner.*
G. A. STONE, *Commissioner.*

The Board orders: That the tolls published in the following tariffs published by the Canadian National Railways under section 3 of the Maritime Freight Rates Act be, and they are hereby, approved, subject to the provisions of sub-section 3 of section 3, namely:—

Supplement No. 75 to Tariff C.R.C. No. E-1235.
Supplement No. 76 to Tariff C.R.C. No. E-1235
Supplement No. 77 to Tariff C.R.C. No. E-1235.
Supplement No. 66 to Tariff C.R.C. No. E-1240.
Supplement No. 67 to Tariff C.R.C. No. E-1240.
Supplement No. 68 to Tariff C.R.C. No. E-1240.
Supplement No. 28 to Tariff C.R.C. No. E-1247.
Supplement No. 8 to Tariff C.R.C. No. E-1248.
Supplement No. 26 to Tariff C.R.C. No. E-1504.
Supplement No. 5 to Tariff C.R.C. No. E-1745.
Supplement No. 26 to Tariff C.R.C. No. E-1804.
Supplement No. 7 to Tariff C.R.C. No. E-1906.
Supplement No. 5 to Tariff C.R.C. No. E-1974.
Supplement No. 2 to Tariff C.R.C. No. E-2047.
Supplement No. 3 to Tariff C.R.C. No. E-2070.

S. J. McLEAN,
Assistant Chief Commissioner.

ACCIDENTS REPORTED TO THE OPERATING DEPARTMENT, BOARD OF RAILWAY COMMISSIONERS, FOR MONTH OF NOVEMBER, 1933

Railway Accidents	163, with	12 persons killed and	163 injured
Railway accidents at highway crossings	18, with	6 persons killed and	24 injured
	181	18	187

	Killed	Injured
Passengers	2	15
Employees	5	124
Others	11	48
	18	187

DETAILS OF ACCIDENTS AT HIGHWAY CROSSINGS

New Brunswick

No. of Accidents	
1	Automobile—Auto ran into side of train. Licence N.B. F-5547.

Quebec

3	Automobile—Auto driver failed to stop for crossing. Licences, Que. H-2325; Que. BW-497; Ont. C-31620.
2	Auto truck—Truck driver failed to stop for crossing. Licences, Que. L-5093; F-12789.

Ontario

3	Automobile—Auto ran into side of train. Licences, Ont. M-4542; JW 512; (1 licence number not given).
1	Automobile—Auto driver failed to see or hear train, or attempted to beat train. Licence Ont. L-4802.
1	Auto truck—Truck ran into side of train. Licence Ont. 23978-C.
1	Auto truck—Truck driver failed to see or hear train. Licence Ont. 45986-C.
1	Horse-drawn vehicle—Horses getting beyond control.
1	Pedestrian—Suicide.

Manitoba

1	Automobile—Auto driver failed to observe train. Licence Man. 3-300.

Saskatchewan

1	Automobile—Auto ran into side of train. Licence Sask. 49-153.
1	Auto truck—Failure of truck driver to exercise proper care. Licence Sask. T-754.

British Columbia

1	Automobile—Failure of auto driver to see or hear train. Licence B.C. 275.

Of the 18 accidents at highway crossings, 2 occurred at Protected Crossings, and 16 at Unprotected Crossings. Ten of the accidents occurred during daylight hours and 8 at night.

Ottawa, January 26, 1934.

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DEC 4 1935

The Board of

Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

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ORDER No. 50784

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.2

TUESDAY, the 20th day of February, A.D. 1934.

S. J. McLEAN, *Assistant Chief Commissioner.*
G. A. STONE, *Commissioner.*

The Board orders: That the tolls published in the following tariffs filed by the Canadian National Railways under section 3 of the Maritime Freight Rates Act be, and they are hereby, approved, subject to the provisions of subsection 3 of the said section 3, namely:—

Supplement 9 to Tariff C.R.C. No. E-1231.
Supplement 42 to Tariff C.R.C. No. E-1234.
Supplement 78 to Tariff C.R.C. No. E-1235.
Supplement 69 to Tariff C.R.C. No. E-1240.
Supplement 70 to Tariff C.R.C. No. E-1240.
Supplement 22 to Tariff C.R.C. No. E-1253.
Supplement 17 to Tariff C.R.C. No. E-1256.
Supplement 6 to Tariff C.R.C. No. E-1745.
Supplement 27 to Tariff C.R.C. No. E-1804.

S. J. McLEAN,
Assistant Chief Commissioner.

Re *Demurrage Penalties assessed by the Canadian Car Demurrage Bureau under General Orders 201 and 349.*

File No. 1700.338

The following tables present in summarized form the reports of the Canadian Car Demurrage Bureau covering car demurrage charges assessed for the year 1933.

NOTE.—First two days over free time $1 per day; three days or more, $5 per day.

EASTERN CANADA

Month—1933	Total cars handled	Number released within free time	Percent	Number held over free time	Percent	Number held under 3 days over free time	Percent	Number held 3 days or more over free time	Percent
January	88,749	85,403	96·23	3,346	3·77	2,809	3·17	537	·60
February	94,424	90,987	96·36	3,437	3·64	2,951	3·13	486	·51
March	108,957	104,675	96·07	4,282	3·93	3,544	3·25	738	·68
April	93,845	90,879	96·84	2,966	3·16	2,487	2·65	479	·51
May	107,765	103,594	96·13	4,171	3·87	3,411	3·16	760	·71
June	106,097	102,394	96·51	3,703	3·49	3,121	2·94	582	·55
July	112,264	108,234	96·41	4,030	3·59	3,319	2·96	711	·63
August	120,780	116,529	96·48	4,251	3·52	3,653	3·02	598	·50
September	134,030	129,620	96·71	4,410	3·29	3,801	2·84	609	·45
October	143,361	138,745	96·78	4,616	3·22	3,930	2·74	686	·48
November	145,222	140,023	96·42	5,199	3·58	4,391	3·02	808	·56
December	122,238	116,823	95·57	5,415	4·43	4,419	3·62	996	·81
TOTAL	1,377,732	1,327,906	.....	49,826	.....	41,836	.....	7,990	.....
Monthly Average	114,811	110,659	96·38	4,152	3·62	3,486	3·04	666	·58

WESTERN CANADA

January	64,052	61,887	96·62	2,165	3·38	1,921	3·00	244	·38
February	62,747	60,708	96·75	2,039	3·25	1,843	2·94	196	·31
March	69,486	67,707	97·44	1,779	2·56	1,577	2·27	202	·29
April	50,809	49,823	98·06	986	1·94	907	1·78	79	·16
May	56,576	55,518	98·13	1,058	1·87	973	1·72	85	·15
June	67,349	66,191	98·28	1,158	1·72	1,060	1·57	98	·15
July	56,835	55,528	97·70	1,307	2·30	1,193	2·10	114	·20
August	68,604	67,273	98·06	1,331	1·94	1,189	1·73	142	·21
September	86,295	84,535	97·96	1,760	2·04	1,558	1·81	202	·23
October	108,692	105,757	97·30	2,935	2·70	2,551	2·35	384	·35
November	91,603	88,406	96·51	3,197	3·49	2,830	3·09	367	·40
December	71,069	68,987	97·07	2,082	2·93	1,944	2·74	138	·19
TOTAL	854,117	832,320	.....	21,797	.....	19,546	.....	2,251	.....
Monthly Average	71,176	69,360	97·49	1,816	2·51	1,629	2·26	188	·25

A. D. CARTWRIGHT,
Secretary, B.R.C.

OTTAWA, February 28, 1934.

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DEC 4 1935

The Board of

Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

Vol. XXIII | Ottawa, March 15, 1934 | No. 26

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In the matter of the fire-hazard at pulpwood loading sidings on the LaTuque Subdivision between Hervey Junction and Fitzpatrick, Manouan Subdivision, Oskelaneo Subdivision, Amos Subdivision, Makamik Subdivision, Kapuskasing Subdivision, Pagwa Subdivision, and Rouyn Subdivision, of the Canadian National Railways, caused in part from the litter of bark and other wood debris removed from cars supplied for loading.

JUDGMENT

File 4741-E-9

McLean, Assistant Chief Commissioner:

At the hearing in Ottawa on the 22nd instant a full opportunity was afforded to make presentations in regard to the question of the fire-hazard at pulpwood loading sidings in the sections set out in the heading of this application. Further, in this connection there was, therefore, an opportunity to set out fully what additional precautions and safeguards were necessary. Representations were made by the railway, by representatives of the provincial departments concerned, and by Mr. McKerrell for the Abitibi Pulp and Paper Company. A statement was also made by Mr. Johnson, who has made inspections in the territory concerned. The matter was set down for hearing by the Board on its own motion.

On consideration of what was submitted, it does not appear that there was established the necessity for directing additional safeguards. No action need be taken on the present record. It would appear from what was submitted that there has been active betterment in connection with the inspections. The matters concerned may, it would appear, be safely left to the efficient inspection and the active co-operation of the railway with the inspecting officials. If a changed condition should justify more stringent regulations than are existent at present, the matter can be considered, but at present the necessity would not appear to arise.

February 23, 1934.

Concurred in by the Deputy Chief Commissioner and Commissioners Norris, Stoneman, and Stone.

Application of the Canadian Pacific Railway Company for the authority of the Board to substitute standard wig-wag signals, at the crossing of its line by Scugog Street in the Town of Bowmanville, Ontario, in lieu of the existing gate protection.

File 3701.73

Heard at Bowmanville, Monday, February 12, 1934.

JUDGMENT

Commissioner Norris:

This case arises from the application of the Canadian Pacific Railway Company to be allowed to substitute standard wig-wag signals as protection at the crossing of its line by Scugog street in the town of Bowmanville, Ontario, in lieu of the existing crossing gates.

The gates at this crossing were installed under Order of the Board No. 17661, dated October 3, 1912. At that time the Toronto Eastern Railway crossed the Canadian Pacific Railway line (C.L.O. & W. Ry.) exactly at the Scugog Street crossing, and the crossing was protected by an interlocking plant, the gates being operated from the interlocker tower.

Order of the Board No. 18541, dated January 15, 1913, apportioned the cost of the installation and maintenance of the gates at Scugog Street crossing, eighty per cent (80%) upon the Canadian Pacific Railway Company (C.L.O. & W. Ry.) and twenty per cent (20%) upon the Toronto Eastern Railway.

In 1919, upon the abandonment of the Toronto Eastern Railway, the diamond crossing and interlocker were removed, the plant, except the tower, being completely dismantled in 1924. Since that time the total cost of operation and maintenance of the gates has been borne and paid by the Canadian Pacific Railway Company. The gates have continued to be operated from the interlocker tower, and latterly the telegraph operators in the station have been moved to the tower, where they operate the gates in addition to their other duties, thus saving the cost of gatemen.

Scugog street, which runs almost due north and south at the point where it crosses the railway, is a county road. It is joined exactly at the crossing of the railway by Wellington street which comes in from the southeast, Scugog and Wellington streets continuing north as one street. There are gates across both Wellington and Scugog streets to the south of the track, and across Scugog street on the north side of the track, all these gates being operated, as previously set forth, from the interlocker tower.

At the hearing of the application at Bowmanville, February 12, 1934, the railway company was represented by Mr. J. H. Spence, K.C., and Colonel Ripley. Mayor Strike, the Reeve and Deputy Reeve, appeared for the town of Bowmanville. Mr. Geo. Annis (Reeve) and Mr. A. L. Pascoe (Deputy Reeve) appeared for the township of Darlington.

The Canadian Pacific Railway Company submitted that the special and peculiar conditions existing at this crossing in the beginning, namely those created by the crossing of two lines of railway exactly at this point, led to the installation of gates; that these special and peculiar conditions do not now exist, and that, therefore, this crossing does not now differ in conditions from many other grade crossings. The railway company further contends that the visible and audible signal—wig-wag and bell—is more effective in the prevention of accidents than the old-time crossing gates; that the wig-wag and bell is a more modern, safer and more economical form of protection than gates.

The railway company is prepared to bear the entire cost of the installation and maintenance of the necessary bells and wig-wags at the Scugog Street crossing, and submits that this will effect an economy of $1,714.53 annually to the company.

Reference was made by the railway company to the judgments of the Assistant Chief Commissioner in the Main Street Crossing, Comber, case (file 9437.133), and in the Talbot Street Crossing, Essex, case (Case 588), Vol. 23, Board's Judgments and Orders, pp. 233-235, in which statistical information is given as to the different types of protection at present in use, and the relative merits of gates and wig-wags thoroughly gone into.

The town of Bowmanville and the township of Darlington submitted objections to the proposed change in the form of protection at Scugog street, entirely from the standpoint of safety. They pointed out that there were switching yards on each side of the crossing, one on the north and one on the south side of the railway line, though only one track (the main line) actually crosses Scugog street.

It was contended by the representatives of the town and the township that confusion would be created in the minds of users of the crossing, should engines be standing on either of these two switches, with the bells and wig-wags in operation; that both motorists and pedestrians would be likely to cross against the bells and wig-wags, under the impression that these were being operated by the standing engines, instead of by an approaching train on the main line track. They submitted it as their opinion that gates are a better form of protection than the bell and wig-wag, and contended that the general public need some absolutely tangible form of "obstruction" to advise them that the danger is on the main line track and nowhere else.

Reference was also made by the town and township representatives to the obstructions to the view at this crossing, the view of the traffic from the north being somewhat obstructed by the water tower, which stands north of the track and almost opposite the station. The banks of a cut also obstruct to some extent the view of trains from the east.

There is only one (main line) track across Scugog street. None of the tracks of either of the two railway yards, lying north and south of the main line track and east and west of the crossing, cross Scugog street at this point, and the proposed bells and wig-wags will protect the main line movement only. Engines from either yard must come on to the main line track to cross Scugog street, and their movement across this crossing will be protected by the bells and wig-wags as soon as they enter the bonded area.

A check of the traffic across Scugog Street crossing for twenty-four hours in June, 1933, showed a movement of 497 pedestrians, 798 vehicles, 4 passenger trains, 7 freight trains and 2 switching movements. Two of the four passenger trains passing during daylight hours stop at the station immediately west of the crossing; the two other passenger trains pass over the crossing at 12.38 a.m. and 6.20 a.m., when there is little or no traffic on the highway. The freight train movements are not fast freight, and while a new time-table shows an additional passenger train since the check of June last, this is a daytime movement, which stops at Bowmanville station.

In the Talbot Street Crossing, Essex (Case No. 588), Vol. 23, Board's Judgments and Orders, pp. 235, and the Queen Street Crossing, Tilbury (Case No. 461), Vol. 23, Board's Judgments and Orders, pp. 238, Mr. Hill the Safety Agent of the New York Central Railroad Lines, gave evidence as to the increase in the number of visual protective cases and the decrease in the number of crossings where gates are used. He was also on the stand in the Furnival Road, Rodney (Case No. 4575), Vol. 23, Board's Judgments and Orders, pp. 304. He referred in his evidence to the experience of the New York Central and said that on the M.C.R. the proportion of crossings having visual protection was about 75 per cent; that is to say that of the 714 crossings on that railway where there is some type of protection, three-quarters have visual signals. The fol-

lowing is excerpted from the evidence of Mr. Hill, given before the Board in the Rodney case (Vol. 608, pp. 1238):—

> "Out of the total number of crossings protected 11 per cent were protected by gates, and they produced 30 of the accidents. If you want to bring it down to the Canadian Division, which is getting nearer, we have on the Canadian Division of the Michigan Central, 150 crossings that have some type of protection. Of this number 90 per cent have visual protection and 9 per cent have gates. The 90 per cent of the crossings having visual protection, produce one-seventh of the accidents. We have in Canada on the Michigan Central 9 per cent protected by gates, and they produced exactly the same number of accidents; in other words, on the Canadian Division of the Michigan Central Railroad the proportion of crossings having protection as between gates and wig-wags is 1 to 7, and they produced exactly the same number of accidents. We have seven times the number of crossings with wig-wag protection as we have with gates, and they had exactly the same number of accidents."

As previously set forth, there is but one track of the Canadian Pacific Railway's line crossing Scugog street; the railway yards lying on both sides of the main line and on opposite sides of the crossing have little or no effect on the conditions as regards safety at this crossing, as only the main line track would be bonded to operate the visual and audible protection.

The submissions of the municipal and township authorities were entirely bearing on the conditions of safety at this crossing, these conditions being naturally the prime consideration.

In view of the fact that, with the removal of the tracks of the Toronto Eastern Railway, all but one of the railway lines crossing Scugog street have been eliminated, leaving one line only to be protected, it would seem clear that the conditions at this point do not differ materially from those at a large number of grade crossings throughout the country. This applies also in regard to the obstructions to the view referred to by the representatives of the town of Bowmanville.

Experience has shown that the audible and visible signal is actually more effective in operation than protection by crossing gates.

At the hearing the railway company spoke only to its original application for two bells and wig-wags at this crossing, these to be located south of the track and protecting traffic from the two streets which converge inside the railway right of way. The Board's engineers were of opinion that it would be further advisable to install a powerful floodlight north of the crossing, as additional protection to traffic from the north. The railway company has, however, written the Board under date of February 22, 1934, stating that,—

> "Following the discussion before the Board on the 12th instant, the officers of the company have carefully considered all the circumstances involved in the substitution of wig-wags for the existing gates at the above crossing, and are of opinion that the third wig-wag should be installed."

I am accordingly of opinion that order should go, granting the application of the Canadian Pacific Railway Company to be allowed to substitute three bells and wig-wags for the gate protection now in use at Scugog street, Bowmanville, double bells and wig-wags to be installed to the south of the railway track, and a third bell and wig-wag to be installed to the north of the track. The location of this protection to be decided upon by the Board's engineers, the railway company to file the usual detail plans. The cost of installation and maintenance of this protection to be borne and paid by the railway company.

OTTAWA, February 26, 1934.

Concurred in by Commissioners Stoneman and Stone.

ORDER No. 50805

In the matter of the application of the Canadian Pacific Railway Company, hereinafter called the "Applicant Company," for leave to substitute wig-wag signals at the crossing of Scugog Street by its line of railway, in the Town of Bowmanville and Province of Ontario, in lieu of the gates installed under the Order of the Board No. 17661, dated October 3, 1912.

File No. 3701.73

THURSDAY, the 1st day of March, A.D. 1934.

S. J. MCLEAN, *Assistant Chief Commissioner.*
Hon. T. C. NORRIS, *Commissioner.*
J. A. STONEMAN, *Commissioner.*
G. A. STONE, *Commissioner.*

Upon hearing the application at the sittings of the Board held at Bowmanville, February 12, 1934, in the presence of counsel for the applicant company, the town of Bowmanville, and the township of Darlington, and what was alleged; and upon reading the report of the Chief Engineer of the Board, and the consent of the applicant company, filed,—

It is ordered:

1. That leave be, and it is hereby, granted the applicant company to install, in lieu of the gates required to be maintained by the said Order No. 17661, dated October 3, 1912, three automatic bells and wigwags at the crossing of Scugog street, in the town of Bomanville and province of Ontario—double bells and wigwags to be installed to the south of the railway track and a third bell and wigwag to be installed to the north of the track—in accordance with the Standard Specifications for Highway Crossing Signals approved under General Order No. 468; a detail plan showing the layout thereof to be submitted for the approval of an engineer of the Board.

2. That the cost of installing and maintaining the said bells and wigwags be borne and paid by the applicant company.

S. J. McLEAN,
Assistant Chief Commissioner.

Application of the City of Montreal for an Order of the Board directing the removal of certain structures and works along a proposed branch line to be built through Prefontaine, Maisonneuve, and Mercier Wards in the City of Montreal and authorized in 1911 and never completed.

File No. 17716

JUDGMENT

MCLEAN, ASSISTANT CHIEF COMMISSIONER:

The application was made by the Canadian Pacific Railway Company on or about August 30, 1911, under section 222 of the Railway Act for authority to construct, maintain and operate a proposed branch line at ground level from a point on its main line a short distance south of Forysth street, now called Rouen street, in Hochelaga Ward, now called Prefontaine Ward, thence through the following present portions of the said city to wit said Prefontaine Ward then known

as Hochelaga Ward, Maisonneuve Ward then constituting the city of Maisonneuve, and Mercier Ward then known as Longue Pointe Ward, of the said city of Montreal, to a certain point in the said Mercier Ward to wit a certain point on cadastral lot No. 395 of the parish of Longue Pointe, Maisonneuve Ward being located between Prefontaine Ward and Mercier Ward, Prefontaine Ward being to the west of said Maisonneuve Ward and Mercier Ward to the east, the whole as will more fully appear from the said application and plans and profiles accompanying the said application on file with the Board B.R.C. File No. 17716 and which branch line was commonly referred to as the Forsyth Street Branch or Longue Pointe Spur.

Subsequently, and before any order was obtained, a new plan showing track elevation was filed. On or about July 13, 1912, Order No. 16998, file 17716, issued authorizing the construction, maintenance and operation of the said proposed branch line as required by plans and profile filed with the Board.

It is not necessary to go into further details in this connection. The application made is for an order directing the railway to demolish and remove within a period of three months from the date of the order in the present application the structures and works which are specified in the application, and it is further set out in the application that the city is asking, in the event of the railway failing to remove the said structures and works, that the city be authorized to demolish and remove same at the expense of the railway company.

Two matters are concerned: First, the question of jurisdiction, and second, the matter of merits of the application. By consent the question of jurisdiction was set down to be spoken to separate and distinct from the question of merits.

In dealing with the powers which it is claimed may be exercised by the Board, it must be remembered that the Board is a statutory tribunal. This is very clearly set out in the decision of the late Chief Commissioner Killam in Duthie v. G.T.R. Co., 4 Can. Ry. Cas., p. 304. At p. 311 Chief Commissioner Killam refers to misconceptions existing apparently based "upon the hazy notion that the Board was created for the purpose of adjudicating upon any claim against or dispute with a railway company." It is further pointed out that not only is the Board a creature of statute, but also our constitution assigns powers to the provincial courts, both of civil and criminal jurisdiction. Continuing, he says: "Corporations created by the Parliament of Canada are ordinarily subject to the provincial laws relating to property and civil rights, and, *prima facie*, civil claims against them should be prosecuted in the provincial courts." At p. 315 he used the following language: ". . . The business of the Board is to enforce the railway legislation of the Dominion Parliament, and, for that purpose, to order the performance of some acts and to prohibit others. It was not created to supplant, or even to supplement, the provincial courts in the exercise of their ordinary jurisdiction, but to exercise an entirely different jurisdiction, though, perhaps, occasionally overlapping that of the provincial courts."

In various decisions of the Board it has been emphasized that while the powers of the Board are broad, there should be no straining after jurisdiction. (Canadian and Dominion Express Co. v. Commercial Acetylene Co., 9 C.R.C., p. 172, 174. See also Bassette v. C.P.R. Co., 24 C.R.C., p. 113.)

The Board must find its powers within the four corners of the Railway Act. (G.T.P. Ry. Co. v. Fort William Landowners and Fort William Investment Co., 1912 A.C. 224.)

The city of Montreal in argument directed attention to sections 181, 182, and sections 33 and 34 of the Railway Act. Section 182, the branch line section, is No. 222 in the legislation which was operative when the order of 1912 issued.

It is not understood that the legality in point of origin of the works concerned is in question. It is, however, claimed in substance that the two-year period within which branch lines may be constructed has long since elapsed and

that whatever rights were obtained under branch line sections lapsed with the termination of the two-year period, and that this affects the continuance of the structures concerning which complaint is made. The Board has no power under the branch line sections to order the railway to construct a branch line. The sections are permissive.

Counsel for the city of Montreal then turns attention to sections 33 and 34 in co-operation with sections 180, 181 and 182. Subsection (2) of section 33 is quoted by him as dealing with the powers of the Board to forbid the doing or continuing of any act, matter or thing which is contrary to the Act or Special Act. He claims that it is contrary to "this Act" for the abutments, columns and girders to be left in place. Counsel for the railway company refers to section 33, subsection 1 (*a*), and claims that the railway has not failed to do anything required to be done under any of these authorities.

Section 33, subsection (2), of the Railway Act reads as follows:—

> "The Board may order and require any company or person to do forthwith, or within or at any specified time, and in any manner prescribed by the Board, so far as is not inconsistent with this Act, any act, matter or thing which such company or person is or may be required to do under this Act, or the Special Act, and may forbid the doing or continuing of any act, matter or thing which is contrary to this Act, or the Special Act; and shall for the purposes of this Act have full jurisdiction to hear and determine all matters whether of law or of fact."

Section 34 is a procedure section. Clause 1, subsection (*b*) of section 33, reads as follows:—

> ". . . requesting the Board to make any order, or give any direction, leave, sanction or approval, which by law it is authorized to make or give, or with respect to any matter, act or thing, which by this Act, or the Special Act, is prohibited, sanctioned or required to be done."

Clause 1, subsection (*b*) of section 33, sets out that the Board has full juristion to inquire into, hear and determine any application by or on behalf of any party interested, and give any direction, leave, sanction or approval which by law it is authorized to make or give, or with respect to any matter, act or thing, which by this Act, or the Special Act, is prohibited, sanctioned or required to be done.

Counsel for the city of Montreal in referring to subsection (2) of section 33 claimed that it was contrary to "this Act" for the abutments, colums and girders to be maintained. Reference is made by counsel for the railway to the provisions of section 33, subsection (*a*), which reads as follows:—

> "complaining that any company, or person, has failed to do any act, matter or thing required to be done by this Act, or the Special Act, or by any regulation, order or direction made thereunder by the Governor in Council, the minister, the Board, or any inspecting engineer or other lawful authority, or that any company or person has done or is doing any act, matter or thing contrary to or in violation of this Act, or the Special Act, or any such regulation, order, or direction,"

and it is contended that the railway has not failed to do anything required to be done under any of these authorities.

At p. 158 of the argument at the hearing counsel for the railway stated in referring to section 33 that the city had complained that the company had failed to do something which it was required to do under the Act, and he said the next part of the section in question dealt with the complaint that a company or person has done or is doing any act, matter or thing contrary to or in violation

of this Act, or the Special Act, or any such regulation, order or direction. He contended that it has not been shown that the railway has done any act, matter or thing contrary to or in violation of this Act or the Special Act. He argues that when an application is made for an order under section 33, the Board must have in the Railway Act, or in some other statute or law, authority to give this direction. Continuing, he said: "I think the proper meaning is that the Board can give a direction prohibiting us from doing something that is prohibited, sanctioning something that is sanctioned, or requiring something that is required to be done. To bring this case within that, you must find elsewhere that what is done or what was done was prohibited by the Act or by some other law." Argument by counsel for the city of Montreal did not tie up to the different matters concerned the words "prohibited," "sanctioned" or "required to be done." His argument was, in substance, that what is sanctioned may be prohibited or required to be done; in other words, the words are treated as interchangeable.

The powers contained in section 33, subsection (2), have been the subject of judicial construction in the City of Hamilton v. T., H. & B. Ry. Co., 50 Supreme Court Reports, 128, at p. 144-147. There the section concerned was 26, subsection (2). In the present Act the comparable section is 33, subsection (2). There is a slight difference in the wording, however. The section as it stands at present reads in part as follows: ". . . or may be required to do under this Act, or the Special Act, . . ."; while in section 26, subsection (2), which was operative when the above-mentioned judgment of 1914 was rendered, the following words are to be found: ". . . is or may be required or authorized to do under this Act or the Special Act . . ."

The judgment in question was rendered by Mr. Justice Duff, the present Chief Justice. It is pointed out by him that the power given under section 26, subsection (2), is especially made exercisable only in so far as it is "not inconsistent with this Act." ". . . When it is suggested that an authority given by some particular section of the Act that on its face is only an authority to pronounce permissive orders, is by the operation of this provision converted into an authority to pronounce mandatory orders, it is necessary in each case to ascertain from the section by which the specific authority is given whether or not such a result is consistent with the true intendment of that section." The Chief Justice continues that in order to have section 26, subsection (2), apply to the case in question, the initiative of the railway company as a substantive condition of the Board's jurisdiction which is merely to "approve" and "sanction" something "proposed" by the railway company if necessary. He points out that the case at Bar itself contemplates the initiative of the railway company as a substantive condition of the Board's jurisdiction which is merely to "approve" and "sanction" something proposed by the railway company. Continuing, he states that the real purpose and meaning of section 26, subsection (2), "itself, . . . is, it appears to me, to give to the Board authority to make mandatory orders for the strictly limited purpose of regulating the time and manner in which some authority shall be exercised which has been conferred by Parliament directly or mediately through the action of the Board." Further, on p. 146 of the judgment, he sets out that the section provides that where a company is or may be authorized or required to do something by an Act of Parliament or by the Board, the Board may order this to be done forthwith "or within any specified time and in any manner prescribed by the Board." On the same page he sets out "the section authorizes the regulating of companies and persons when exercising powers conferred by the Act or by the Board by prescribing the time and manner in which such powers shall be exercised. To read the section as authorizing the Board by a mandatory order to convert a permissive authority to do something into an obligation to do it, is to go beyond the necessary scope and meaning of the language used."

Section 33 does not give mandatory power with respect to the works which may be approved or authorized under the permissive clause. The Board's attention has not been directed to any other sections bearing upon jurisdiction.

The application of the city of Montreal should be dismissed.

March 2, 1934.

Concurred in by the Deputy Chief Commissioner and Commissioner Stoneman.

ORDER No. 50840

In the matter of the application of the City of Montreal, in the Province of Quebec, hereinafter called the "Applicant," for an Order requiring the Canadian Pacific Railway Company to remove certain structures and works along a proposed branch line to be built through Prefontaine, Maisonneuve, and Mercier Wards in the City of Montreal authorized to be constructed under Order No. 16998, dated July 13, 1912, and never completed.

File No. 17716

WEDNESDAY, the 7th day of March, A.D. 1934.

S. J. MCLEAN, *Asst. Chief Commissioner.*
F. N. GARCEAU, K.C., *Deputy Chief Commissioner.*
J. A. STONEMAN, *Commissioner.*

Upon hearing the application at the sittings of the Board held in Ottawa, February 14, 1934, in the presence of counsel for the applicant and the railway company, and what was alleged,—

It is ordered: That the application be, and it is hereby, refused.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 50789

In the matter of the application of the Canadian National Railways and the Canadian Pacific Railway Company for an Order (1) approving an arrangement between the Applicant Companies for the pooling of passenger train services hereinafter referred to; (2) under Section 193 of the Railway Act, authorizing the Canadian National Railways to run and operate Pool Train No. 6 over and upon that portion of the railway of the Canadian Pacific Railway Company from the connection between the lines of the Applicant Companies at or near Dorval Station, mileage 4·79 Canadian Pacific Winchester Subdivision, to Windsor Station, Montreal; (3) under Section 315 of the Railway Act, for leave to the Applicant Companies to pool the tolls and divide the earnings in respect of the services which are to be pooled.

File No. 27563.283

WEDNESDAY, the 21st day of February, A.D. 1934.

S. J. MCLEAN, *Asst. Chief Commissioner.*
Hon. T. C. NORRIS, *Commissioner.*
J. A. STONEMAN, *Commissioner.*
G. A. STONE, *Commissioner.*

Upon reading the application and hearing the parties; and upon the report and recommendation of the Chief Operating Officer of the Board,—

It is ordered:

1. That the arrangement under which it is proposed—

(*a*) To cancel the Canadian National daily trains Nos. 33 and 34 between Quebec and Montreal via Richmond, and Nos. 75 and 46 between Quebec and Montreal via Drummondville;

(*b*) To operate as pooled trains between Quebec and Montreal the Canadian Pacific daily trains Nos. 353 and 354, arriving at and departing from the Canadian Pacific Windsor Station, Montreal, Nos. 355 and 356 arriving at and departing from the Canadian Pacific Place Viger Station, Montreal, and Nos. 357-301 and 302-358, with one section of each train arriving at and departing from each of said stations;

(*c*) To cancel the Canadian Pacific daily trains Nos. 37 and 20 between Montreal and Toronto, Nos. 553 and 552 between Ottawa and Bedell, and Nos. 549 and 548 between Ottawa and Prescott;

(*d*) To operate as pooled trains the following:—

Canadian National daily trains Nos. 17 and 16, and 5 and 14 over the Canadian National line between Montreal (Bonaventure Station) and Toronto;

Canadian Pacific daily trains Nos. 21 and 22 over the Canadian Pacific line between Montreal (Windsor Station) and Toronto;

Canadian National trains Nos. 9, 10, and 109 over the Canadian National line between Toronto and Belleville;

be approved.

2. That, instead of operating Pool Train No. 6 into Bonaventure Station as provided for by Order of the Board No. 49675, dated March 21, 1933, the Canadian National Railways be authorized to run and operate said Pool Train No. 6 over and upon that portion of the Canadian Pacific Railway from the connection between such railway and the Canadian National Railway in the vicinity of Dorval Station, mileage 4·79 Winchester Subdivision (Canadian Pacific Railway), to Windsor Station, Montreal; and to use and enjoy, for the purpose of such operation, in common with the Canadian Pacific Railway Company, the tracks, terminals, and stations of the Canadian Pacific Railway Company comprised in the portion of its railway so referred to.

3. That leave be granted to the Applicant Companies to pool the tolls and divide the earnings in respect of the services covered by this Order and said Order of the Board No. 49675, and in respect of non-pooled services in the territory affected by such pooled trains, in such manner as may be agreed upon between them.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 50793

In the matter of the application of the Buffalo and Fort Erie Public Bridge Company, hereinafter called the "Applicant Company," for approval of its Tariff C.R.C. No. 2, covering tolls to be charged for use of the Peace Bridge between Fort Erie, Ontario, and Buffalo, New York.

File No. 36795.1

WEDNESDAY, the 21st day of February, A.D. 1934.

S. J. McLEAN, *Assistant Chief Commissioner.*
Hon. T. C. NORRIS, *Commissioner.*
J. A. STONEMAN, *Commissioner.*

Upon the report and recommendation of the Assistant Chief Traffic Officer of the Board, and its appearing that the tolls published in the said tariff are reasonable for the service rendered,—

It is ordered: That the applicant company's said Tariff C.R.C. No. 2, covering tolls to be charged for use of the Peace bridge between Fort Erie, in the province of Ontario, and Buffalo, in the state of New York, on file with the Board under file No. 36795.1, be, and it is hereby, approved.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 50798

In the matter of the application of the Canadian Pacific Railway Company and the Canadian National Railways for an Order approving the arrangement entered into, in pursuance of the Canadian National-Canadian Pacific Act, 1933, for the joint use by the said Railway Companies of the passenger station and passenger facilities and team tracks of the Canadian Pacific Railway Company and the freight shed and freight facilities of the Canadian National Railways, and the discontinuance of the passenger station of the Canadian National Railways at the City of Fredericton, in the Province of New Brunswick.

File No. 38983

WEDNESDAY, the 28th day of February, A.D. 1934.

S. J. McLEAN, *Asst. Chief Commissioner.*
G. A. STONE, *Commissioner.*

Upon application of the Canadian Pacific Railway Company and the Canadian National Railways, and hearing counsel for the Canadian National Railways; and upon the recommendation of the Chief Operating Officer of the Board,—

It is ordered: That the proposed joint use of the passenger station and passenger facilities and team tracks of the Canadian Pacific Railway from a

point at or near the junction of the tracks of the Canadian Pacific Railway Company with those of the Canadian National Railways at Fredericton, Centreville Subdivision of the Canadian National Railways, and the joint use of the freight shed and freight facilities of the Canadian National Railways from approximately the same point, and the discontinuance of the passenger station of the Canadian National Railways, be, and the same, so far as may be necessary thereto, are hereby, approved: Providing that approval of the discontinuance of the passenger station referred to hereby granted shall not be taken as pecluding the Board from further consideration of the question of the closing of the station upon complaint or application made to it by the city.

S. J. McLEAN,
Assistant Chief Commissioner.

ORDER No. 50809

In the matter of tariffs, and supplements to tariffs, filed under the provisions of the Maritime Freight Rates Act.

File No. 34822.12

SATURDAY, the 3rd day of March, A.D. 1934.

S. J. McLEAN, *Assistant Chief Commissioner.*
G. A. STONE, *Commissioner.*

It is ordered:

1. That the tolls published from Yarmouth, Nova Scotia, to Chelmsford, Chapleau, and Sault Ste. Marie, Ontario, in Tariff C.R.C. No. E-4312, filed by the Canadian Pacific Railway Company under section 9 of the Maritime Freight Rates Act, be, and they are hereby, approved, subject to the provisions of subsection 3 of section 3 of the said Act.

2. And the Board hereby certifies that the normal tolls for the purpose of reimbursement under subsection 3 of section 9 of the said Act, on traffic carried under the said Tariff C.R.C. No. E-4312, approved herein, are as follows:—

Yarmouth, N.S. to	Class rates in cents per 100 pounds 1	2	3	4	5
Chelmsford, Ont.	181½	159	136	113½	91
Chapleau, Ont.	215½	188½	161½	134½	108
Sault Ste. Marie, Ont.	173½	152	130	108½	87

S. J. McLEAN,
Assistant Chief Commissioner.

ACCIDENTS REPORTED TO THE OPERATING DEPARTMENT BOARD OF RAILWAY COMMISSIONERS, FOR MONTH OF DECEMBER, 1933

Railway accidents	146, with	15 persons killed and	151 injured.
Railway accidents at highway crossings	25, with	6 persons killed and	23 injured.
	171	21	174

	Killed	Injured
Passengers	1	16
Employees	5	114
Others	15	44
	21	174

DETAILS OF ACCIDENTS AT HIGHWAY CROSSINGS

No. of Accidents

Nova Scotia

1 Automobile—Auto ran into side of train. Licence N.S. 72-536.

Quebec

1 Automobile—Auto driver failed to stop for crossing. Licence Que. 62008.
1 Automobile—Auto driver failed to pay attention to approaching train. Licence Que. 36031.
1 Auto Truck—Truck driver failed to stop for train. Licence L-4506 Que.
1 Auto Truck—Truck driver failed to stop for crossing. Licence Que. F-6493.
1 Auto Truck—Truck driver unable to stop due to slippery pavement. Licence Que. L-4964.
2 Horse-drawn Vehicle—Vehicle driver attempted to beat train over crossing.
1 Horse-drawn Vehicle.

Ontario

2 Automobile—Auto ran into side of train. Licences, Ont. 127680; LZ-775.
2 Automobile—Auto driver failed to see or hear engine. Licences, Ont. EH-399; V-6666.
1 Automobile—Auto driver failed to see or hear approaching train. Licence Ont. EW-743.
1 Automobile—Auto driver failed to stop for lowered gates; smashed through. Licence Ont. S-2651.
1 Automobile—Auto driver failed to observe approaching track motor. Licence Ont. JZ-847.
1 Automobile—Auto driver failed to see cars passing over crossing. Licence Ont. R-1310.
1 Automobile—Licence Ont. ES-683.
1 Pedestrian—Failed to observe approaching train.

Saskatchewan

1 Automobile—Auto driver failed to exercise ordinary precaution. Licence Sask. 64-303.
1 Horse-drawn Vehicle—Vehicle driver failed to look for train.

Alberta

1 Automobile—Licence Alta. 39-137.
1 Horse-drawn Vehicle—Vehicle driver failed to have horses under control.

British Columbia

2 Auto Truck—Truck driver failed to see or hear train. Licences, B.C. 25-376; 6-149.

Of the twenty-five accidents at highway crossings, six occurred at protected crossings and nineteen at unprotected crossings. Fourteen of the accidents occurred during daylight hours and eleven at night.

Ottawa, February 28, 1934.

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